

MONTANA LEGISLATIVE HISTORY

Chapter 490 1997Bill H 502 S _____Original bill & history ✓ cH. Committee on Human Services & AgriHearing Date(s) Feb 12 ✓ cFeb 17 ✓ c

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_____ c

Date Out _____ c

S. Committee on Public Health Welfare + SafetyHearing Date(s) Mar 14 ✓ cMar 21 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO STATE ADMINISTRATION		
3/11	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	47	0
3/17	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/21	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 144		
	EFFECTIVE DATE: 10/01/97		

HB 502 INTRODUCED BY SOFT, ET AL.

LC1131 DRAFTER: NISS

RELATING TO MENTAL HEALTH

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO HUMAN SERVICES & AGING		
2/08	FISCAL NOTE REQUESTED		
2/12	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	FISCAL NOTE PRINTED		
2/21	2ND READING PASSED	95	5
2/26	3RD READING PASSED	92	7
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/14	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS CONCURRED	93	3
4/12	3RD READING CONCURRED AS AMENDED	84	12
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 490		
	EFFECTIVE DATE: 07/01/97		

HB 503 INTRODUCED BY CAREY

LC0702 DRAFTER: FOX

PROVIDE FOR THE MONTANA HEALTH SECURITY SYSTEM

2/08	INTRODUCED
2/08	FIRST READING
2/08	REFERRED TO TAXATION
2/08	FISCAL NOTE REQUESTED
2/18	HEARING
2/19	FISCAL NOTE RECEIVED
2/19	FISCAL NOTE PRINTED
3/07	TABLED IN COMMITTEE
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
	DIED IN COMMITTEE

1
2 INTRODUCED BY Jeff Walz ^{House} BILL NO. 502

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION
5 OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS
6 "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY
7 OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO
8 VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND
9 ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS;
10 AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323,
11 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112,
12 53-21-115, 53-21-116, 53-21-121, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129,
13 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197,
14 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN
15 EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **Section 1.** Section 2-16-501, MCA, is amended to read:

20 **"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the
21 following events before the expiration of the term of the incumbent:

22 (1) the death of the incumbent;

23 (2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously~~
24 ~~mentally ill~~ suffers from a mental disorder and is in need of commitment;

25 (3) ~~his~~ resignation of the incumbent;

26 (4) ~~his~~ removal of the incumbent from office;

27 (5) ~~his~~ the incumbent's ceasing to be a resident of the state or, if the office ~~he~~ is local, of the
28 district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within
29 which the duties of ~~his~~ the incumbent's office are required to be discharged;

30 (6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent of a felony or of ~~any~~ an offense involving moral turpitude or
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or
10 appointment."

11
12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 **"2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared
16 void, the body, judge, or officer before whom the proceedings were ~~had must~~ conducted shall give notice
17 ~~thereof of the proceedings~~ to the officer authorized to fill the vacancy."

18
19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 **"25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~
21 ~~or~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor
22 or other person must shall appear either by ~~his~~ general guardian, if ~~he~~ the minor or other person has one,
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill or~~ incompetent person, or person who has been committed
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or, an~~
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application
30 of a relative or friend;

(c) in ~~any~~ a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is returned or before the answer:

(a) in the case of a minor who is 14 or more years old and who applies before the summons is returned or at the time of the return, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion."

Section 4. Section 27-2-401, MCA, is amended to read:

"27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor ~~or seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not a part of the time limit for commencing the action. However, the time limit cannot be extended more than 5 years by the disability of ~~serious mental illness~~ commitment.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to recover damages. In the action, the person may recover the sum or the value of the property that the person would have received upon the final distribution of the estate if an action had been ~~seasonably~~ commenced in a timely manner by the personal representative.

(3) A person may not claim a disability unless it existed when the right of action or entry accrued.

(4) When both disabilities referred to in subsection (1) coexist at the time that the right of action or entry accrues, the limitation does not attach until both are removed."

Section 5. Section 27-8-204, MCA, is amended to read:

1 **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested
 2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or
 3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~
 4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal
 5 relations ~~in respect thereto~~:

6 (1) to ascertain any class of creditors, devisees, heirs, or others;

7 (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular
 8 act in their fiduciary capacity; or

9 (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including
 10 questions of construction of wills and other writings."
 11

12 **Section 6.** Section 33-20-121, MCA, is amended to read:

13 **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not
 14 be delivered or issued for delivery in this state if it contains a provision:

15 (a) for a period shorter than that provided by statute within which an action at law or in equity may
 16 be commenced on the policy; or

17 (b) that excludes or restricts liability for death caused in a certain specified manner or occurring
 18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting
 19 coverage as specified in the policy in the event of death:

20 (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces
 21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian
 22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air
 23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24 (ii) as a result of aviation ~~or any~~ air travel, or flight;

25 (iii) as a result of a specified hazardous occupation or occupations;

26 (iv) while the insured is a resident outside the continental United States and Canada; or

27 (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~
 28 ~~mentally ill~~ committed pursuant to 53-21-127, or otherwise. If a life insurance policy contains a dependent
 29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30 (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide

1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the
2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve
3 valuation method on the basis of the mortality table and interest rate specified in the policy for the
4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed
5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by
6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,
8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to
9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more
11 favorable to the policyholder than a provision permitted by this section."

12
13 **Section 7.** Section 37-3-323, MCA, is amended to read:

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation
15 whenever it is brought to its attention that there is reason to suspect that a person having a license or
16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a
18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared
19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared
20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it
21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for
25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of
28 these conditions or the commission of these offenses and may, upon order of the board, include requiring
29 the person to submit to a physical examination or a mental examination, or both, by a physician or
30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part
2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or
4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~
5 ~~ill or to be~~ addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127
6 the person's license may be suspended by the board. The suspension continues until the licensee is found
7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to
8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of
9 the board."

10
11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for
13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus
14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed
16 podiatrist:

17 (a) is mentally or physically unable to engage safely in the practice of podiatry;

18 (b) has procured the license by fraud, misrepresentation, or through error;

19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later
20 been lawfully declared competent;

21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it
22 incapacitates the licensee in the safe performance of professional duties;

23 (e) has been found guilty of unprofessional conduct;

24 (f) has practiced podiatry while the license was suspended or revoked;

25 (g) has had the license suspended or revoked by any licensing authority for reasons other than
26 nonpayment of fees; or

27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged
29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation
30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

1 a physician or physicians selected by the board if it appears to be in the best interest of the public that this
2 evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the
3 examination, and copies ~~shall~~ must be released to the board on written request.

4 (4) If a person holding a license to practice podiatry under this chapter is by a final order or
5 adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally~~
6 ~~ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license
7 may be suspended by the board. The suspension continues until the licensee is found by the court to be
8 restored to reason or cured or until the licensee is discharged as restored to reason or cured and the
9 licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

10
11 **Section 9.** Section 37-11-321, MCA, is amended to read:

12 **"37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may
13 refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser
14 disciplinary action on the license of any licensed person who:

15 (1) is habitually intoxicated or is addicted to the use of narcotic drugs;

16 (2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2,
17 ~~of this title;~~

18 (3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by
19 board rule;

20 (4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this~~
21 ~~title;~~

22 (5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy
23 or practice as an assistant;

24 (6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

25 (7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of
26 competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to be
27 ~~seriously mentally ill~~ require further commitment;

28 (8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

29 (9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical
30 therapist or assistant or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation of the person's training and education."

Section 10. Section 37-12-322, MCA, is amended to read:

"37-12-322. Investigation of complaints. (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition ~~such that~~ renders the person ~~is~~ unable to safely engage in the practice of chiropractic;

(b) ~~has been declared incompetent or seriously mentally ill~~ has been committed pursuant to 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or released from supervision;

(c) has procured the license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while the license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request."

Section 11. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- sentence to correctional facility -- commitment to department -- placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state

1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
4 the judge that space is available for the youth at that facility. The sentencing judge may not place
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
10 placement recommendations from the youth placement committee. The judge may not place the youth in
11 an in-state residence unless the department informs the judge that resources are available for placement
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
19 finds that the placement is necessary for the protection of the public. The court may order the department
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
30 or the persons having legal custody of the youth;

1 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish
2 services the court may designate;

3 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the
4 youth and the community and that does not obligate funding from the department for services outside the
5 state of Montana without the department's approval, except that a youth may not be placed by a youth
6 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
7 subsection (1)(f), place a youth in a residential treatment facility.

8 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
9 person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a
10 mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights
11 provided by 53-21-114 through 53-21-119.

12 (i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to
13 be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a
14 state youth correctional facility.

15 (ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from
16 a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional
17 facility must be moved to a more appropriate placement in response to the youth's mental health needs and
18 consistent with the disposition alternatives available in 53-21-127.

19 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

20 (2) When a youth is committed to the department, the department shall determine the appropriate
21 placement and rehabilitation program for the youth after considering the recommendations made under
22 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
24 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
26 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
27 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the
28 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
30 execution of sentence of adults convicted of crimes.

1 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
2 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.
3 A youth who is placed in any other placement by the department, the youth court, or the youth court's
4 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
5 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
6 the youth probation officer includes but is not limited to:

7 (a) submitting information and documentation necessary for the person, committee, or team that
8 is making the placement recommendation to determine an appropriate placement for the youth;

9 (b) securing approval for payment of special education costs from the youth's school district of
10 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

11 (c) submitting an application to a facility in which the youth may be placed; and

12 (d) case management of the youth.

13 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
14 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
15 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
16 the evaluation, except as provided in subsection (5). A county may contract with the department or other
17 public or private agencies to obtain evaluation services ordered by the court.

18 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
19 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
20 the youth's parents to pay all or part of the cost of the evaluation.

21 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
22 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
23 is transferable to criminal court under 41-5-206.

24 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
25 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

26 (8) An order of the court may be modified at any time. In the case of a youth committed to the
27 department, an order pertaining to the youth may be modified only upon notice to the department and
28 subsequent hearing.

29 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
30 judgment copies of medical reports, social history material, education records, and any other clinical,

1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

2 (10) If a youth is committed to the department, the court shall examine the financial ability of the
3 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
4 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
5 care.

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
8 an amount based on the uniform child support guidelines adopted by the department of public health and
9 human services pursuant to 40-5-209.

10 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
11 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
12 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
13 nevertheless subject to withholding for the payment of the contribution without need for an amendment
14 of the support order or for any further action by the court.

15 (b) A court-ordered exception from contributions under this section must be in writing and be
16 included in the order. An exception from the immediate income withholding requirement may be granted
17 if the court finds there is:

18 (i) good cause not to require immediate income withholding; or

19 (ii) an alternative arrangement between the department and the person who is ordered to pay
20 contributions.

21 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
22 based upon:

23 (i) a written determination and explanation by the court of the reasons why the implementation of
24 immediate income withholding is not in the best interests of the youth; and

25 (ii) proof of timely payment of previously ordered support in cases involving modification of
26 contributions ordered under this section.

27 (d) An alternative arrangement must:

28 (i) provide sufficient security to ensure compliance with the arrangement;

29 (ii) be in writing and be signed by a representative of the department and the person required to
30 make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 12. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant ~~is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require commitment, or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

Section 13. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as
2 provided in 53-21-115 through 53-21-118.

3 (2) In addition, the parents or guardian of a respondent have the right to:

4 (a) be present at any hearing held pursuant to this part;

5 (b) be represented by counsel in any hearing;

6 (c) offer evidence and cross-examine witnesses in any hearing; and

7 (d) have the respondent examined by a professional of their choice when a professional is
8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible
9 person appointed by the court."

10

11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 **"53-21-101. Purpose.** The purpose of this part is to:

13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder
14 ~~such and requiring commitment the~~ care and treatment ~~as will be~~ suited to the needs of the person and to
15 ~~insure~~ ensure that ~~such~~ the care and treatment are skillfully and humanely administered with full respect
16 for the person's dignity and personal integrity;

17 (2) accomplish this goal whenever possible in a community-based setting;

18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are
19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~
20 suffering from a mental disorder and requires commitment; and

21 (4) ~~assure~~ ensure that due process of law is accorded any person coming under the provisions of
22 this part."

23

24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

26 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
27 created by 2-15-211.

28 (2) "Court" means any district court of the state of Montana.

29 (3) "Department" means the department of public health and human services provided for in
30 2-15-2201.

1 (4) "Emergency situation" means a situation in which any person is in imminent danger of death
2 or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

3 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of
7 a charitable or religious organization, or any other person appointed by the court to perform the functions
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation
11 of the friend of respondent.

12 (6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial
13 adverse effects on an individual's cognitive or volitional functions. The term does not include:

14 (a) addiction to drugs or alcohol; or

15 (b) drug or alcohol intoxication.

16 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which
17 is equipped and staffed to provide treatment for persons with mental disorders or a community mental
18 health center or any mental health clinic or treatment center approved by the department. A correctional
19 institution or facility or jail is not a mental health facility within the meaning of this part.

20 (8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted
21 injury or injury to others or the imminent threat of injury but which:

22 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health
23 even with the available assistance of family, friends, or others;

24 (b) is treatable, with a reasonable prospect of success and consistent with the least restrictive
25 course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be
26 committed;

27 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

28 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for
29 treatment; and

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may
2 be established by the patient's medical history.

3 (9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult
4 brothers and sisters of a person.

5 (10) "Patient" means a person committed by the court for treatment for any period of time or who
6 is voluntarily admitted for treatment for any period of time.

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer

8 (12) "Professional person" means:

9 (a) a medical doctor; or

10 (b) a person who has been certified, as provided for in 53-21-106, by the department.

11 (13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a
12 professional person.

13 (14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally
14 ill or seriously mentally ill.

15 (15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in
16 self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person
17 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.
18 A person may not be involuntarily committed to a mental health facility or detained for evaluation and
19 treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering
20 from a mental disorder unless the condition causes the person to be seriously mentally ill within the
21 meaning of this part.

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541.
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions
25 apply:

26 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
27 created by 2-15-211.

28 (2) "Commitment" means an order by a court requiring an individual to receive treatment for a
29 mental disorder.

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.

1 ~~(3)~~(4) "Department" means the department of public health and human services provided for in
2 2-15-2201.

3 ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death
4 or serious bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from
5 a mental disorder and appears to require commitment.

6 ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15 ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17 (a) addiction to drugs or alcohol; ~~or~~

18 (b) drug or alcohol intoxication;

19 (c) mental retardation; or

20 (d) epilepsy.

21 ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital
22 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community
23 mental health center or any mental health clinic or treatment center approved by the department. A
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25 ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult
26 brothers and sisters of a person.

27 ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or
28 who is voluntarily admitted for treatment for any period of time.

29 ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or
30 other peace officer.

1 ~~(11)~~(12) "Professional person" means:

2 (a) a medical doctor; or

3 (b) a person who has been certified, as provided for in 53-21-106, by the department.

4 ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards
5 of a professional person.

6 ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be
7 ~~seriously mentally ill suffering from a mental disorder and requiring commitment.~~

8 ~~(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in~~
9 ~~self inflicted injury or injury to others or the imminent threat of injury or which has deprived the person~~
10 ~~afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.~~
11 ~~A person may not be involuntarily committed to a mental health facility or detained for evaluation and~~
12 ~~treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from~~
13 ~~a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of~~
14 ~~this part.~~

15 (15) "State hospital" means the Montana state hospital."

16

17 **Section 16.** Section 53-21-112, MCA, is amended to read:

18 **"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a
19 ~~minor who is 16 years of age or older~~ a parent or guardian of a minor may consent to ~~receive~~ mental health
20 services to be rendered to the minor by:

21 (a) a facility ~~that is not a state institution; or~~

22 (b) a person licensed in this state to practice medicine; ~~or psychology~~

23 (c) a mental health professional licensed in this state.

24 (2) A minor who is at least 16 years of age may, without the consent of a parent or guardian
25 consent to receive mental health services from those facilities or persons listed in subsection (1).

26 ~~(2)(3)~~ Except as provided by this section, the provisions of 53-21-111 apply to the voluntary
27 admission of a minor to a mental health facility but not to the state hospital.

28 ~~(3)(4)~~ Except as provided by this subsection, voluntary admission of a minor to a mental health
29 facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult.
30 minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The A~~ minor himself who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make ~~such a request~~ and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel shall must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with potential legal proceedings.

~~(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor."~~

Section 17. Section 53-21-115, MCA, is amended to read:

"53-21-115. (Temporary) Procedural rights. In addition to any other rights ~~which~~ that may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning ~~him~~ the person;

(2) the right to know, in advance of any hearing, the names and addresses of any witnesses who will testify in support of the petition;

(3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;

~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning ~~him~~ the person;

~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

~~(5)(6)~~ the right to be represented by counsel;

- 1 ~~(6)~~(7) the right to remain silent;
- 2 ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable
- 3 to civil matters generally;
- 4 ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;
- 5 ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~
- 6 professional person is willing and reasonably available;
- 7 ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this
- 8 part; and
- 9 ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing
- 10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)
- 11 **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which~~ that
- 12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or
- 13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this
- 14 part has the following rights:
- 15 (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning
- 16 ~~him~~ the person;
- 17 (2) the right in any hearing to be present, to offer evidence, and to present witnesses in any
- 18 proceeding concerning ~~him~~ the person;
- 19 (3) the right to know, before a hearing, the names and addresses of any witnesses who will testify
- 20 in support of a petition;
- 21 ~~(3)~~(4) the right in any hearing to cross-examine witnesses;
- 22 ~~(4)~~(5) the right to be represented by counsel;
- 23 ~~(5)~~(6) the right to remain silent;
- 24 ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable
- 25 to civil matters generally;
- 26 ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;
- 27 ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such the~~
- 28 professional person is willing and reasonably available;
- 29 ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this
- 30 part; and

1 ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing
2 held pursuant to this part."

3
4 **Section 18.** Section 53-21-116, MCA, is amended to read:

5 **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The
6 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.
7 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,
8 who shall be compensated from the public funds of the county where the respondent resides. (Terminates
9 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

10 **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**
11 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring
12 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge
13 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who ~~shall~~ must be
14 compensated from the public funds of the county where the respondent resides."

15
16 **Section 19.** Section 53-21-121, MCA, is amended to read:

17 **"53-21-121. (Temporary) Petition for commitment -- contents of -- notice of.** (1) The county
18 attorney, upon the written request of any person having direct knowledge of the facts, may file a petition
19 with the court:

20 (a) alleging that there is a person within the county who is seriously mentally ill and requesting that
21 the person be committed to a mental health facility for a period of no more than 3 months; or

22 (b) alleging that there is a person within the county who is mentally ill and requesting that the
23 person be committed to a mental health facility for a period of no more than 30 days.

24 (2) The petition shall contain:

25 (a) the name and address of the person requesting the petition and his interest in the case;

26 (b) the name of the respondent and, if known, the address, age, sex, marital status, and
27 occupation of the respondent;

28 (c) the purported facts supporting the allegation of mental illness;

29 (d) the name and address of every person known or believed to be legally responsible for the care,
30 support, and maintenance of the person for whom evaluation is sought;

1 (e) the name and address of the person's next of kin to the extent known to the county attorney
2 and the person requesting the petition;

3 (f) the name and address of any person whom the county attorney believes might be willing and
4 able to be appointed as friend of respondent;

5 (g) the name, address, and telephone number of the attorney, if any, who has most recently
6 represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement
7 as to whether to the best knowledge of the person requesting the petition the person for whom evaluation
8 is sought is indigent and therefore unable to afford the services of an attorney; and

9 (h) a statement of the rights of the respondent which shall be in conspicuous print and identified
10 by a suitable heading.

11 (3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before
12 the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and
13 the order setting the date and time of the hearing and the names of the respondent's counsel, professional
14 person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally
15 responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition,
16 and any other person identified by the county attorney as a possible friend of respondent other than the
17 one named as the friend of respondent. The notice may provide, other than as to the respondent and his
18 counsel, that no further notice will be given unless written request is filed with the clerk of court.
19 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

20 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The
21 county attorney, upon the written request of any person, may file a petition with the court alleging that
22 there is a person within the county who is ~~seriously mentally ill and requesting that the person be~~
23 ~~committed to a mental health facility for a period of no more than 3 months~~ suffering from a mental
24 disorder and who requires commitment pursuant to this chapter.

25 (2) The petition ~~shall~~ must contain:

26 (a) the name and address of the person requesting the petition and ~~his~~ the person's interest in the
27 case;

28 (b) the name of the respondent and, if known, the address, age, sex, marital status, and
29 occupation of the respondent;

30 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the

1 disposition sought pursuant to 53-21-127(2), and the need for commitment;

2 (d) the name and address of every person known or believed to be legally responsible for the care,
3 support, and maintenance of the ~~person~~ respondent for whom evaluation is sought;

4 (e) the name and address of the ~~person's~~ respondent's next of kin to the extent known to the
5 county attorney and the person requesting the petition;

6 (f) the name and address of any person whom the county attorney believes might be willing and
7 able to be appointed as friend of respondent;

8 (g) the name, address, and telephone number of the attorney, if any, who has most recently
9 represented the ~~person~~ respondent for whom evaluation is sought; if there is no attorney, there ~~shall~~ must
10 be a statement as to whether to the best knowledge of the person requesting the petition the ~~person~~
11 respondent for whom evaluation is sought is indigent and ~~therefore~~ unable to afford the services of an
12 attorney; and

13 (h) a statement of the rights of the respondent, which ~~shall~~ must be in conspicuous print and
14 identified by a suitable heading.

15 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the
16 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of
17 the peace. Notice of the petition and the order setting the date and time of the hearing and the names of
18 the respondent's counsel, professional person, and friend of respondent ~~shall~~ must be hand-delivered or
19 mailed to the person or persons legally responsible for care, support, and maintenance of the respondent,
20 the next of kin identified in the petition, and any other person identified by the county attorney as a
21 possible friend of respondent other than the one named as the friend of respondent. The notice may
22 provide, other than as to the respondent and ~~his~~ the respondent's counsel, that no further notice will be
23 given unless written request is filed with the clerk of court."

24
25 **Section 20.** Section 53-21-123, MCA, is amended to read:

26 **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**
27 **of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the
28 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination
29 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney
30 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the

1 court, with copies to the respondent's attorney and the county attorney. If the professional person
2 recommends commitment, the professional person's written report must contain a statement of the
3 professional person's recommendations to the court for disposition under 53-21-127(2).

4 (2) The following action ~~shall~~ must be taken based on the professional person's findings:

5 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally
6 notify counsel and the respondent, if ~~he~~ the respondent has been detained, ~~shall~~ must be released and the
7 petition dismissed. However, the county attorney may, upon good cause shown, request the court to order
8 an additional, but no more than one, examination by a different professional person for a period of no more
9 than 4 hours.

10 (b) If ~~he~~ the court finds that commitment proceedings should continue, the hearing ~~shall~~ must be
11 held as scheduled.

12 (3) The court may not order further evaluation pending the hearing unless sound medical reasons
13 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,
14 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

15 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**
16 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice
17 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable
18 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately
19 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~
20 the examination to the court, with copies to the respondent's attorney and the county attorney. If the
21 professional person recommends commitment, the professional person's written report must contain a
22 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

23 (2) The following action ~~shall~~ must be taken based on the professional person's findings:

24 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally
25 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county
26 attorney may, upon good cause shown, request the court to order an additional, but no more than one,
27 examination by a different professional person for a period of no more than 4 hours.

28 (b) If ~~he~~ the court finds that commitment proceedings should continue, the hearing ~~shall~~ must be
29 held as scheduled.

30 (3) The court may not order further evaluation pending the hearing unless sound medical reasons

1 require additional time for a complete evaluation. ~~Such~~ The reasons shall must be set forth in the order,
2 along with the amount of additional time needed."

3
4 **Section 21.** Section 53-21-126, MCA, is amended to read:

5 **"53-21-126. (Temporary) Trial or hearing on petition.** (1) The respondent shall be present unless
6 his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all
7 stages of the trial. The trial shall be limited to the determination of whether or not the respondent is
8 mentally ill or seriously mentally ill within the meaning set forth in this part.

9 (2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable
10 doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other
11 matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat
12 of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to
13 be material and relevant as to the respondent's present condition.

14 (3) The professional person appointed by the court shall be present for the trial and subject to
15 cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried
16 by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally
17 ill. The written report of the professional person that indicates the professional person's diagnosis may be
18 attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible
19 merely because it is contained in the report. The court may order the trial closed to the public for the
20 protection of the respondent.

21 (4) The professional person may testify as to the ultimate issue of whether the respondent is
22 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on
23 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in
24 53-21-102.

25 (5) The court, upon the showing of good cause and when it is in the best interests of the
26 respondent, may order a change of venue. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

27 **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be
28 present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the
29 respondent shall must be represented by counsel at all stages of the trial. The trial ~~shall must~~ be limited to
30 the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in~~

1 this part suffering from a mental disorder and requires commitment. At the trial, the court shall consider
2 all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the
3 court determines that the respondent is suffering from a mental disorder, the court shall then determine
4 whether the respondent requires commitment. In determining whether the respondent requires commitment,
5 the court shall consider the following:

6 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the
7 respondent's own basic needs, such as food, clothing, shelter, health, or safety;

8 (b) whether the respondent has recently, because of a mental disorder and through an act or an
9 omission, caused self-injury or injury to others;

10 (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent
11 or to others because of the respondent's acts or omissions; and

12 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts
13 or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to
14 the point at which the respondent will become a danger to self or to others or will be unable to provide for
15 the respondent's own basic needs, such as food, clothing, shelter, health, or safety. Predictability may be
16 established by the respondent's medical history.

17 (2) The standard of proof in ~~any~~ a hearing held pursuant to this section is proof beyond a
18 reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to
19 all other matters, ~~except that~~. However, the respondent's mental disorders ~~shall be evidenced~~ disorder
20 must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others
21 ~~shall be evidenced~~ must be proved by overt acts or omissions, sufficiently recent in time as to be material
22 and relevant as to the respondent's present condition.

23 (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject
24 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that~~
25 if. However, if the issues are tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding
26 that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The
27 written report of the professional person that indicates the professional person's diagnosis may be attached
28 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely
29 because it is contained in the report. The court may order the trial closed to the public for the protection
30 of the respondent.

1 (4) The professional person may testify as to the ultimate issue of whether the respondent is
2 ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. This testimony is
3 insufficient unless accompanied by evidence from the professional person or others that:

4 ~~(a) the respondent is suffering from a mental disorder; and~~

5 ~~(b) the mental disorder has resulted in self inflicted injury or injury to others or the imminent threat~~
6 ~~thereof or has deprived the person afflicted of the ability to protect his life or health~~

7 (a) the respondent, because of a mental disorder, is substantially unable to provide for the
8 respondent's own basic needs, such as food, clothing, shelter, health, or safety;

9 (b) the respondent has recently, because of a mental disorder and through an act or an omission,
10 caused self-injury or injury to others;

11 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to
12 others because of the respondent's acts or omissions; or

13 (d) (i) the respondent's mental disorder:

14 (A) has resulted in behavior that creates difficulty in protecting the respondent's life or health;

15 (B) is treatable, with a reasonable prospect of success;

16 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for
17 treatment; and

18 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the
19 point at which the respondent will become a danger to self or to others or will be unable to provide for the
20 respondent's own basic needs, such as food, clothing, shelter, health, or safety. Predictability may be
21 established by the respondent's medical history.

22 (5) The court, upon the showing of good cause and when it is in the best interests of the
23 respondent, may order a change of venue."
24

25 **Section 22.** Section 53-21-127, MCA, is amended to read:

26 **"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the
27 respondent is not mentally ill or seriously mentally ill within the meaning of this part, the respondent must
28 be discharged and the petition dismissed.

29 (2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously
30 mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The

1 disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth
2 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and
3 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

4 (i) commit the respondent to a facility for a period of not more than 3 months;

5 (ii) order the respondent to be placed in the care and custody of a relative or guardian or some
6 other appropriate place other than an institution;

7 (iii) order outpatient therapy; or

8 (iv) make some other appropriate order for treatment.

9 (b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a
10 period of more than 3 months.

11 (c) In determining which of the above alternatives to order, the court shall choose the least
12 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

13 The court shall consider and shall describe in its order what alternatives for treatment of the respondent
14 are available, what alternatives were investigated, and why the investigated alternatives were not deemed
15 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication
16 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the
17 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient
18 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary
19 administration and unless, if possible, a medication review committee reviews it prior to the beginning of
20 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning
21 of the involuntary administration. The medication review committee must include at least one person who
22 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,
23 must receive adequate written notice of the date, time, and place of the review and must be allowed to
24 appear and give testimony and evidence. The involuntary administration of medication must be again
25 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if
26 medication is still being involuntarily administered. The mental disabilities board of visitors and the director
27 of the department of public health and human services must be fully informed of the matter within 5
28 working days after the beginning of the involuntary administration. The director shall report to the governor
29 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it
30 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the

facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that the respondent receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless respondent is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;

(ii) commit the respondent to a community facility, program, or course of treatment for a period of not more than 3 months;

~~iii~~ (iii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;

~~iii~~ (iv) order outpatient therapy; or

1 ~~(iv)~~(v) make some other appropriate order for treatment.

2 (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody,
3 or course of treatment for a period of more than 3 months.

4 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall
5 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit
6 effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment~~
7 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~
8 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician
9 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary
10 medication is necessary to protect the respondent ~~and or~~ the public ~~and or~~ to facilitate effective treatment.
11 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility
12 or a physician designated by the court approves it prior to the beginning of the involuntary administration
13 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary
14 administration or, if prior review is not possible, within 5 working days after the beginning of the
15 involuntary administration. The medication review committee must include at least one person who is not
16 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient
17 has one, must receive adequate written notice of the date, time, and place of the review and must be
18 allowed to appear and give testimony and evidence. The involuntary administration of medication must be
19 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration
20 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director
21 of the department of public health and human services must be fully informed of the matter within 5
22 working days after the beginning of the involuntary administration. The director shall report to the governor
23 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~
24 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~
25 ~~facts upon which it found involuntary medication to be necessary.~~

26 (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to
27 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court
28 may require commitment only to a community facility and may not require commitment at the state
29 hospital.

30 (e) In ordering commitment pursuant to this section, the court shall make the following findings

1 of fact:

2 (i) a detailed statement of the facts upon which the court found the respondent to be suffering
3 from a mental disorder and requiring commitment;

4 (ii) the alternatives for treatment that were considered;

5 (iii) the alternatives available for treatment of the respondent;

6 (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

7 (v) the name of the facility, program, or individual to be responsible for the management and
8 supervision of the respondent's treatment;

9 (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was
10 chosen from among other alternatives; and

11 (vii) if the order includes involuntary medication, the reason involuntary medication was chosen
12 from among other alternatives."

13
14 **Section 23.** Section 53-21-128, MCA, is amended to read:

15 **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month
16 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be
17 followed:

18 (a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person
19 in charge of the patient at the place of detention may petition the district court in the county where the
20 patient is detained for extension of the detention period unless otherwise ordered by the original committing
21 court. The petition shall be accompanied by a written report and evaluation of the patient's mental and
22 physical condition. The report shall describe any tests and evaluation devices which have been employed
23 in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future
24 course of treatment anticipated by the professional person.

25 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
26 the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and
27 the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous
28 detention authority, the court shall immediately set a time and place for a hearing on a date not more than
29 10 days from the receipt of the request and notify the same people, including the professional person in
30 charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a

1 period not to exceed 6 months.

2 (c) Procedure on the petition for extension when a hearing has been requested shall be the same
3 in all respects as the procedure on the petition for the original 3-month commitment except the patient is
4 not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility
5 in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any,
6 shall be paid by the county that paid the same costs in the initial commitment proceedings.

7 (d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of
8 this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to
9 suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient
10 therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more
11 than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are
12 available, what alternatives were investigated, and why the investigated alternatives were not deemed
13 suitable. The court shall not order continuation of an alternative which does not include a comprehensive,
14 individualized plan of treatment for the patient. A court order for the continuation of an alternative shall
15 include a specific finding that a comprehensive, individualized plan of treatment exists.

16 (2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this
17 subsection (2) must be followed:

18 (a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under
19 53-21-127(3), the professional person in charge of the respondent's care may petition the court for
20 extension of the treatment period. The petition must be accompanied by a written report and evaluation
21 of the respondent's mental and physical condition. The report shall describe any tests and evaluation
22 devices which have been employed in evaluating the respondent, the course of treatment which has been
23 undertaken for the respondent, and the future course of treatment anticipated by the professional person.

24 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
25 the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,
26 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination
27 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date
28 not more than 5 days from the receipt of the request and notify the same people, including the professional
29 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment
30 for a period not to exceed 30 days.

1 (c) Procedure on the petition for extension when a hearing has been requested shall be the same
2 in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment except that
3 the respondent is not entitled to trial by jury. The hearing shall be held in the district court for the county
4 in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness
5 fees, if any, shall be paid by the county that paid the same costs in the initial proceedings.

6 (d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this
7 part, the petition shall be dismissed. If the court finds that the respondent continues to be mentally ill, the
8 court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court
9 shall describe what alternatives for treatment of the respondent are available, what alternatives were
10 investigated, and why the investigated alternatives were not considered suitable. The court may not order
11 continuation of an alternative which does not include a comprehensive, individualized plan of treatment for
12 the respondent. A court order for the continuation of an alternative shall include a specific finding that a
13 comprehensive, individualized plan of treatment exists.

14 (3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained
15 under the same procedure described in subsection (1) except that the patient's custody may not be affected
16 for more than 1 year without a renewal of the commitment under the procedures set forth in subsection
17 (1), including a statement of the findings required by subsection (1).

18 (4) The period of treatment provided for in 53-21-127(3) may be extended only once under this
19 section. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

20 **53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less
21 than 2 calendar weeks prior to the end of the 3-month period of ~~detention~~ commitment provided for in
22 53-21-127(2), the professional person in charge of the patient at the place of ~~detention~~ commitment may
23 petition the district court in the county where the patient is ~~detained~~ committed for extension of the
24 ~~detention~~ commitment period unless otherwise ordered by the original committing court. The petition ~~shall~~
25 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The
26 report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have been employed in evaluating
27 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future
28 course of treatment anticipated by the professional person.

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
30 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the

1 court, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the
2 previous ~~detention~~ commitment authority, the court shall immediately set a time and place for a hearing on
3 a date not more than 10 days from the receipt of the request and notify the same people, including the
4 professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of
5 commitment for a period not to exceed 6 months.

6 (c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the
7 same in all respects as the procedure on the petition for the original 3-month commitment except the
8 patient is not entitled to trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction
9 over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and
10 witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial commitment
11 proceedings.

12 (d) If upon the hearing the court finds the patient not ~~seriously mentally ill~~ to be suffering from a
13 mental disorder and requiring commitment within the meaning of this part, ~~he~~ the patient ~~shall~~ must be
14 discharged and the petition dismissed. If the court finds that the patient continues to suffer from ~~serious~~
15 ~~mental illness~~ a mental disorder and to require commitment, the court shall order commitment, custody in
16 relatives, outpatient therapy, or other order as set forth in 53-21-127(2) ~~except that no~~. However, an order
17 may not affect ~~his~~ the patient's custody for more than 6 months. In its order, the court shall describe what
18 alternatives for treatment of the patient are available, what alternatives were investigated, and why the
19 investigated alternatives were not ~~deemed~~ found suitable. The court ~~shall~~ may not order continuation of
20 an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the patient.
21 A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a
22 comprehensive, individualized plan of treatment exists.

23 (2) Further extensions may be obtained under the same procedure described in subsection (1)
24 ~~except that; however,~~ the patient's custody may not be affected for more than 1 year without a renewal
25 of the commitment under the procedures set forth in subsection (1), including a statement of the findings
26 required by subsection (1)."

27
28 **Section 24.** Section 53-21-129, MCA, is amended to read:

29 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists.
30 a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious~~

1 ~~mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent
2 danger of death or serious bodily harm to the person or to others into custody only for sufficient time to
3 contact a professional person for emergency evaluation. If possible, a professional person should be called
4 prior to taking the person into custody.

5 (2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~
6 is a danger to the person or to others because of a mental disorder and that an emergency situation exists,
7 then the person may be detained and treated until the next regular business day. At that time, the
8 professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if
9 ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121
10 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall
11 file a report with the court explaining ~~his~~ the professional person's actions.

12 (3) The county attorney of ~~any~~ a county may make arrangements with ~~any~~ a federal, state,
13 regional, or private mental facility or with a mental health facility in ~~any~~ a county for the detention of
14 persons held pursuant to this section. ~~Whenever~~ If an arrangement has been made with a facility that does
15 not, at the time of the emergency, have a bed available to detain the person at that facility, the person may
16 be transported to the state hospital for detention and treatment as provided in this part. This determination
17 must be made on an individual basis in each case, and the professional person at the local facility ~~must~~ shall
18 certify to the county attorney that the facility does not have adequate room at that time.

19 (4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state
20 hospital must be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."

21
22 **Section 25.** Section 53-21-132, MCA, is amended to read:

23 "**53-21-132. Cost of examination and commitment.** (1) The cost of ~~the~~ precommitment
24 examination, ~~commitment~~, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering
25 from a mental disorder and who requires commitment to a mental health facility must be paid by the county
26 in which ~~he~~ the person resides at the time ~~he~~ that the person is ~~adjudged to be seriously mentally ill~~
27 committed. The sheriff must be allowed the actual expenses incurred in taking a committed person ~~who~~
28 ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

29 (2) The county of residence shall also pay all precommitment expenses, including transportation
30 to a mental health facility, incurred in connection with the detention, examination, and precommitment

1 custody of the respondent. However, the county of residence is not required to pay costs of treatment and
2 custody of the respondent after the respondent is committed pursuant to this part. The fact that a person
3 is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to
4 this part does not relieve a third party from a contractual obligation to pay for the cost of the examination,
5 hospitalization, or treatment.

6 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and
7 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public
8 mental health program funds.

9 (4) A community service provider that is a private, nonpublic provider may not be required to treat
10 or treat without compensation a person who has been committed."

11
12 **Section 26.** Section 53-21-134, MCA, is amended to read:

13 **"53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder**
14 **pending return to home state.** A person who is ~~seriously mentally ill~~ suffering from a mental disorder and
15 in need of commitment and who is not a resident of this state may be received into the state hospital for
16 a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."

17
18 **Section 27.** Section 53-21-138, MCA, is amended to read:

19 **"53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail. (1)**
20 The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons
21 accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental
22 disorders and who require commitment, as defined in 53-21-102.

23 (2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~
24 suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

25 (a) request services from a crisis intervention program established by the department, as provided
26 for in 53-21-139;

27 (b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

28 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment
29 and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require
30 commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for ~~serious mental illness~~ a mental disorder and the need for commitment can be performed."

Section 28. Section 53-21-139, MCA, is amended to read:

"53-21-139. Crisis intervention programs. (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n)."

Section 29. Section 53-21-144, MCA, is amended to read:

"53-21-144. Rights concerning photographs and videotapes. (1) A person admitted to a mental health facility may be photographed ~~upon admission for identification and the~~ or videotaped for the clinical or administrative purposes of the facility. Such The photographs ~~shall be~~ or videotapes are confidential and ~~shall not be released by the facility except pursuant to court order.~~ Photographs may be released to a law enforcement agency when needed to aid in the search for a person who has left a facility without authorization from the facility's medical staff. A law enforcement agency may not subsequently release photographs to the public or other persons unless authorized by a court order.

(2) ~~No other~~ Other nonmedical photographs ~~shall~~ or videotapes may not be taken or used without consent of the patient or, if applicable, the patient's legal guardian or without a court order."

1 **Section 30.** Section 53-21-182, MCA, is amended to read:

2 **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the
3 patient's commitment, the court may, on its own initiative or upon application of the professional person
4 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party
5 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,
6 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient
7 therapy or other appropriate placement or treatment."

8
9 **Section 31.** Section 53-21-195, MCA, is amended to read:

10 **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**
11 **-- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient
12 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition
13 in any district court by the county attorney, the professional person in charge of the patient's case, or the
14 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each
15 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under
16 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded
17 to the clerk. The file or files must be promptly forwarded.

18 (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

19 (3) The petition must state:

20 (a) the patient's name and last-known address;

21 (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent
22 appointed by the court, if any and if this information is reasonably ascertainable;

23 (c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering
24 from a mental disorder and requiring commitment within the meaning of this part and is presently under a
25 valid order of commitment pursuant to 53-21-127 or 53-21-128;

26 (d) a simple and precise statement of the facts showing that the patient has violated a condition
27 of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a
28 result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

29 (e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must
30 be in conspicuous print and identified by a suitable heading.

1 (4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

2 (5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing
3 must be held no more than 5 days after the date that the petition is filed, including weekends and holidays,
4 unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient.
5 Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered
6 to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

7
8 **Section 32.** Section 53-21-197, MCA, is amended to read:

9 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court
10 may order that the patient's conditional release status be revoked and that the patient be returned to the
11 mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate
12 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

13 (a) the conditionally released patient has been determined by the district court to be ~~seriously~~
14 ~~mentally ill~~ suffering from a mental disorder and requiring commitment and is presently under a valid order
15 of commitment pursuant to 53-21-127 or 53-21-128; and

16 (b) the conditionally released patient has violated a condition of the release, that the violation has
17 caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient
18 can no longer be appropriately served by outpatient care.

19 (2) A revocation of the patient's conditional release status under subsection (1) must be based on
20 the testimony of the professional person responsible for the patient's case.

21 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a
22 treatment plan must be updated or a new plan prepared for the patient as required by and within the time
23 set forth in 53-21-162.

24 (4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may
25 not order hospitalization or impose other conditions of release that extend beyond the expiration date of
26 the order committing the patient under 53-21-127 or 53-21-128."

27
28 **Section 33.** Section 53-21-198, MCA, is amended to read:

29 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be
30 extended by the district court beyond the expiration date of the order committing the patient under

1 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear
2 and convincing evidence that:

3 (a) continuation of the conditions of release is necessary to prevent the deterioration of the
4 patient's mental disorder; and

5 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~
6 patient. Predictability may be established by the patient's medical history.

7 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under
8 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the
9 professional person responsible for the patient's case may petition the court for extension of the conditions
10 of release. The petition must be accompanied by a written report and evaluation of the patient's mental
11 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been
12 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,
13 and the future course of treatment anticipated by the professional person.

14 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
15 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
16 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the
17 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place
18 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,
19 including the professional person in charge of the patient. If a hearing is not requested, the court shall
20 enter an order extending the conditions of release for a period not to exceed 6 months.

21 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing
22 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,
23 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district
24 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by
25 the county that paid the same costs in the initial commitment proceeding.

26 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been
27 made, the conditions of release may not be extended. If the court finds that the required showing has been
28 made, the court may extend the conditions of release as recommended by the professional person. In its
29 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives
30 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court

1 may not order continuation of an alternative that does not include a comprehensive, individualized plan of
2 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative
3 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

4 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~
5 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the
6 extension under the procedures set forth in this section, including a hearing and a statement of the findings
7 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation
8 provided in subsection (1)."

9
10 **Section 34.** Section 70-19-413, MCA, is amended to read:

11 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies
12 if a person entitled to commence an action for the recovery of real property or for the recovery of the
13 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property
14 or to rents or services out of the same is, at the same time ~~such~~ the title first descends or accrues:

15 (a) under the age of majority;

16 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or

17 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term
18 of less than for life.

19 (2) The time during which disability continues is not considered any portion of the time in this
20 chapter limited for the commencement of ~~such~~ the action or the making of ~~such~~ the entry or defense, ~~but~~
21 ~~such.~~ The action may be commenced or entry or defense made within the period of 5 years after ~~such~~ the
22 disability ceases or after the death of the person entitled who dies under ~~such~~ the disability, but ~~such~~ the
23 action may not be commenced or entry or defense made after that period."

24
25 **Section 35.** Section 70-29-113, MCA, is amended to read:

26 **"70-29-113. Death or incompetency of parties -- proceedings not delayed.** (1) If during the
27 pendency of the action ~~any of the parties~~ a party dies or ~~becomes seriously mentally ill~~ is committed
28 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be
29 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~
30 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to

1 represent the interest ~~which that~~ was held by the party until ~~his~~ the party's heirs or legal representatives,
2 or successors in interest have appeared in the action.

3 (2) An attorney ~~se~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a
4 reasonable compensation for ~~his~~ the attorney's services, ~~which~~. The compensation may be taxed as costs
5 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share
6 or interest, in the discretion of the court."

7
8 **Section 36.** Section 70-29-210, MCA, is amended to read:

9 "70-29-210. **Consent of guardian to share of ward.** The general guardian of a minor and the
10 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed
11 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who
12 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~
13 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or
14 other person entitled ~~and~~ to the share. The guardian may execute a release, in ~~his~~ the person's behalf, to
15 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the
16 court."

17
18 **Section 37.** Section 70-29-328, MCA, is amended to read:

19 "70-29-328. **Incompetent's share of proceeds -- payment to guardian.** The guardian who may be
20 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant
21 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest
22 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the
23 proceeds of ~~such~~ the real property from the referees. The guardian may receive the interest on executing
24 an undertaking with ~~sufficient sureties on an undertaking,~~ a surety. The undertaking must be approved by a
25 judge of the court, ~~that he~~ and must state that the guardian will faithfully discharge the trust ~~reposed~~ placed
26 in ~~him~~ the guardian and will ~~render a true and just~~ make an accurate account to the person entitled to the
27 accounting or to ~~his~~ the person's legal representative."

28
29 **Section 38.** Section 72-5-322, MCA, is amended to read:

30 "72-5-322. **Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the

1 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court
2 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~
3 ~~shall.~~ However, the order may not forcibly detain the ward against ~~his~~ the ward's will for more than 72
4 hours.

5 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights
6 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment
7 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

8
9 NEW SECTION. Section 39. Saving clause. [This act] does not affect rights and duties that
10 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
11 act].

12
13 NEW SECTION. Section 40. Effective date. [This act] is effective July 1, 1997.

14 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0502, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill relating to mental health, and deleting the definition of "seriously mentally ill" and substituting "mental disorder".

ASSUMPTIONS:

1. This bill provides current terminology and clarification where needed.

FISCAL IMPACT:

Passage of HB 502 has no fiscal impact on state government.

 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0502, as introduced

HB 502

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By CHAIRMAN DUANE GRIMES, on February 12, 1997,
at 3:00 P.M., in ROOM 104.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Loren L. Soft, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. John C. Bohlinger (R)
Rep. Bill Carey (D)
Rep. Deb Kottel (D)
Rep. Billie Krenzler (D)
Rep. Brad Molnar (R)
Rep. Wes Prouse (R)
Rep. Diane Sands (D)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: David Niss, Legislative Services Division
Jaelene Racicot, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 485, HB 502, & SB 8 (2-10-97)
Executive Action: SB 8 DO CONCUR 16-0
HB 412 DO PASS 16-0

HEARING ON HB 485

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, introduced the bill. {Tape: 1; Side: A;
Approx. Time Count: .4; Comments: See EXHIBIT 1.}

Proponents' Testimony:

Jim Smith, (Mr. Smith did not sign the visitor's register; therefore do not know what organization he represented).

{Tape: 1; Side: B; Approx. Time Count: 9.7.}

Patty Foley, Helena. {Tape: 1; Side: B; Approx. Time Count: 10.7.}

Mary Alice Cook, Advocate for Families and Children. {Tape: 1; Side: B; Approx. Time Count: 11.1.}

Marty Lambert, Gallatin County Attorney. {Tape: 1; Side: B; Approx. Time Count: 11.5.}

Mike Batista, Department of Justice. {Tape: 1; Side: B; Approx. Time Count: 12.9.}

Kevin Draushaar, Nonprescription Drug Manufacturers Association. {Tape: 1; Side: B; Approx. Time Count: 14.1.}

Darryl Bruno, Department of Public Health and Human Services. {Tape: 1; Side: B; Approx. Time Count: 17.; Comments: See EXHIBIT 5.}

Orley Sinkler, Belgrade Chamber of Commerce. {Tape: 1; Side: B; Approx. Time Count: 18.6.}

Laura Piergina, Belgrade Chamber of Commerce {Tape: 1; Side: B; Approx. Time Count 20.6.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 27.7.}

Closing by Sponsor:

SEN. HARGROVE closed. {Tape: 2; Side: A; Approx. Time Count: 4.2.}

HEARING ON HB 502Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, introduced the bill. {Tape: 2; Side: A; Approx. Time Count: 7.6.}

Proponents' Testimony:

Dan Anderson, Department of Public Health and Human Services.
{Tape: 2; Side: A; Approx. Time Count: 20.7.}

Al Smith, Montana Advocacy Program. {Tape: 2; Side: A; Approx.
Time Count: 29.8; Comments: See EXHIBIT 6.}

Robert Caldwell, M.D., self. {Tape: 2; Side: A; Approx. Time
Count: 43.2.}

Leslie Alkorn, Montana Advocacy Program. {Tape: 2; Side: B;
Approx. Time Count: .1.}

Vicki Frazier, Lewis and Clark County Deputy Attorney. {Tape: 2;
Side: B; Approx. Time Count: 2.5.}

Jeff Feathergill, M.D., self. {Tape: 2; Side: B; Approx. Time
Count: 9.2.}

Kathy Standard, Executive Committee of the Meriwether Lewis
Institute. {Tape: 2; Side: B; Approx. Time Count: 10.3;
Comments: See EXHIBIT 6A.}

Sophie Price, Secretary of the Meriwether Lewis Institute.
{Tape: 2; Side: B; Approx. Time Count: 15.; Comments: See EXHIBIT
6B.}

Jill Long, self. {Tape: 2; Side: B; Approx. Time Count: 17.4;
Comments: See EXHIBIT 6C.}

Andrea Merrill, Executive Director Mental Health Association of
Montana. {Tape: 2; Side: B; Approx. Time Count: 18.9; Comments:
See EXHIBIT 7.}

Steve Cahill, NASW. {Tape: 2; Side: B; Approx. Time Count:
20.1.}

Robert Torres, Montana Chapter of Social Workers. {Tape: 2;
Side: B; Approx. Time Count: 20.6.}

Kathy McGowan, Executive Director of the Montana Council of
Mental Health. {Tape: 2; Side: B; Approx. Time Count: 22.1.}

Gene Hare, Executive Director of Mental Health Visitors. {Tape:
2; Side: B; Approx. Time Count: 22.9.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 25.5.}

Closing by Sponsor:

REP. SOFT closed. {Tape: 3; Side: A; Approx. Time Count: 7.9.}

REP. GRIMES RESUMED TAKING ACTION ON HB 412. {Tape: 3; Side: A; Approx. Time Count: 10.7.}

EXECUTIVE ACTION ON HB 412

Vote: THE MOTION CARRIED UNANIMOUSLY. RECEIVED PROXY VOTES FROM REP. SMITH, REP. CAREY, REP. SANDS, REP. BOHARSKI, REP. SQUIRES, & REP. MOLNAR.

EXECUTIVE ACTION ON SB 8

Motion: REP. KRENZLER MOVED SB 8 DO CONCUR. {Tape: 3; Side: A; Approx. Time Count: 11.7.}

Vote: THE MOTION CARRIED UNANIMOUSLY. RECEIVED PROXY VOTES FROM REP. SMITH, REP. CAREY, REP. SANDS, REP. BOHARSKI, REP. SQUIRES, & REP. MOLNAR.

REP. GRIMES. {Tape: 3; Side: A; Approx. Time Count: 11.9.}

REP. SIMON. {Tape: 3; Side: A; Approx. Time Count: 15.3.}

REP. ADAMS. {Tape: 3; Side: A; Approx. Time Count: 15.4.}

REP. BERGMAN. {Tape: 3; Side: A; Approx. Time Count: 15.7.}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By CHAIRMAN DUANE GRIMES, on February 17, 1997,
at 3:00 P.M., in ROOM 104.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Loren L. Soft, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. John C. Bohlinger (R)
Rep. Bill Carey (D)
Rep. Deb Kottel (D)
Rep. Billie Krenzler (D)
Rep. Brad Molnar (R)
Rep. Wes Prouse (R)
Rep. Diane Sands (D)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Jaelene Racicot, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 558
Executive Action: HJR 15 TABLED 16-0
HB 472 TABLED 12-4
HB 502 DO PASS AS AMENDED 16-0

HEARING ON HB 558

Opening Statement by Sponsor:

REP. LIZ SMITH, HD 56, introduced the bill. {Tape: 1; Side: A;
Approx. Time Count: 1.9.}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 15.2; Comments: REP. KOTTEL ASKED DR. WISE FOR A COPY OF AIDS, PUBLIC HEALTH, AND HUMAN RIGHTS IN CUBA. SEE EXHIBIT 21.}

Closing by Sponsor:

REP. SMITH closed. {Tape: 2; Side: A; Approx. Time Count: 20.5; Comments: See EXHIBIT 22.}

EXECUTIVE ACTION ON HJR 15

Motion: REP. KRENZLER MOVED HJR 15 DO PASS. {Tape: 2; Side: A; Approx. Time Count: 31.7.}

Motion: REP. PROUSE MADE A SUBSTITUTE MOTION. HE MOVED HJR 15 TO BE TABLED. {Tape: 2; Side: A; Approx. Time Count: 32.8.}

Vote: THE MOTION CARRIED UNANIMOUSLY. 16-0 {Tape: 2; Side: A; Approx. Time Count: 33.0.}

EXECUTIVE ACTION ON HB 472

Motion: REP. KRENZLER MOVED TO TABLE HB 472. {Tape: 2; Side: A; Approx. Time Count: 34.1.}

Vote: THE MOTION CARRIED UNANIMOUSLY. {Tape: 2; Side: A; Approx. Time Count: 34.1.}

EXECUTIVE ACTION ON HB 502

Motion: REP. SOFT MOVED HB 502 DO PASS. {Tape: 2; Side: A; Approx. Time Count: 36.5.}

Motion: REP. SOFT MOVED THE SOFT AMENDMENTS. {Tape: 2; Side: A; Approx. Time Count: 37.4.}

Vote: THE MOTION CARRIED. {Tape: 2; Side: A; Approx. Time Count: 37.5.}

Discussion:

REP. KOTTEL. {Tape: 2; Side: A; Approx. Time Count: 39.0.}

Motion/Vote: REP. KOTTEL MOVED THE KOTTEL AMENDMENT. THE MOTION CARRIED UNANIMOUSLY. {Tape: 2; Side: A; Approx. Time Count: 42.3.}

Motion: REP. MOLNAR MOVED HB 502 DO PASS AS AMENDED. {Tape: 2; Side: A; Approx. Time Count: 42.7.}

Vote: THE MOTION CARRIED. 16-0 {Tape: 2; Side: A; Approx. Time Count: 42.7.}

Discussion: REP. MOLNAR questioned REP. SOFT. {Tape: 2; Side: A; Approx. Time Count: 42.8.}

Motion: REP. MOLNAR MOVED HB 386 FROM THE TABLE. {Tape: 2; Side: B; Approx. Time Count: .1; Comments: REP. MOLNAR asked for the committee's permission to remove HB 386 from the table for the purpose of discussion.}

Discussion:

REP. KOTTEL. {Tape: 2; Side: B; Approx. Time Count: 2.2; Comments: Questioned REP. MOLNAR.}

REP. AHNER. {Tape: 2; Side: B; Approx. Time Count: 2.9; Comments: Questioned REP. MOLNAR.}

REP PROUSE. {Tape: 2; Side: B; Approx. Time Count: 3.7.}

REP. BOHARSKI. {Tape: 2; Side: B; Approx. Time Count: 4.0.}

Vote: THE MOTION CARRIED. 13-3 {Tape: 2; Side: B; Approx. Time Count: 5.4.}

**There are no exhibits on the Law Library's CD
for the dates between Feb 12 through March 4,
1997.**

**To obtain copies from the original documents,
contact the Montana Historical Society
Library/Archives
406-444-2681.**

SENATE PUBLIC HEALTH, W & S

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0371	AHNER, CHRIS	REPLACE AFDC PROGRAM WITH FAIM FINANCIAL ASSISTANCE PROGRAM	3/03	3/24	CONCUR AS AMENDED 3/24	VOTE:	3/26
HB0386	MOLNAR, BRAD	ADVOCACY PROGRAM FOR FAMILIES WITH CHILDREN IN STATE INTERVENTION	3/03	3/21	CONCUR AS AMENDED 3/24	VOTE: UNANIMOUS	3/26
HB0396	GRIMES, DUANE	PLACE PODIATRY IN MEDICAL LEGAL PANEL ACT	2/17	3/12	CONCUR	3/12 VOTE:	3/14
HB0412	BERGMAN, ELLEN	REVISE DEFINITION OF HEALTH CARE PROVIDER FOR HIV TESTING PURPOSES	2/19	3/14	CONCUR	3/17 VOTE:	3/19
HB0453	ARNOTT, PEGGY	REVISE AND EXPAND THE REACH OF LAWS RELATING TO MATERIALS HARMFUL TO MINORS	3/03	3/19	CONCUR AS AMENDED 3/24	VOTE:	3/26
HB0502	SOFT, LOREN	GENERALLY REVISE MENTAL HEALTH LAWS	3/04	3/14	CONCUR AS AMENDED 3/21	VOTE:	3/24
HB0519	WYATT, DIANA	CERTAIN ADVANCED PRACTICE REG. NURSE AS TREATING PROVIDER FOR WORK COMP	3/04			VOTE: LABOR & EMPLOYMENT	
HB0538	KEENAN, BOB	ESTABLISH PILOT PROJECT FOR MEDICAID MEDICAL SAVINGS ACCOUNTS	2/20	3/17	CONCUR AS AMENDED 3/17	VOTE:	3/19
HB0558	SMITH, LIZ	DPHHS TO TREAT HIV AS COMMUNICABLE DISEASE; REMOVE WRITTEN INFORMED CONSENT	3/04	3/19	CONCUR AS AMENDED 3/21	VOTE:	3/24
HJ0018	DEBRUYCKER, ROGER	RESOLUTION URGING CONGRESS TO REVISE DRUG APPROVAL PROCESS	2/19	3/12	CONCUR	3/12 VOTE:	3/14
SB0008	HARGROVE, DON	INCLUDE EPHEDRINE IN SCHEDULE IV LIST OF DANGEROUS DRUGS	12/27	1/10	PASS AS AMENDED 1/27	VOTE:	1/27
SB0014	SWYSGOOD, CHARLES	TRANSFERRING CERTAIN RESPONSIBILITIES FROM DEQ TO DPHHS	12/27	1/10	PASS AS AMENDED 1/15	VOTE:	1/16

22

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on March 14, 1997, at 3:46 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 502, 3/7/97
HB 412, 3/5/97
SJR 16, 3/10/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 3:46 PM}

HEARING ON SJR 16

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte

Proponents: Charles Briggs, Area Agency on Aging, Helena
Mike Hanshew, DPHHS
Verner Bertelsen, MT Senior Citizens Assn.
James Larsen, Meriweather Unit

Opponents: None

SENATOR CHRIS CHRISTIAENS asked if all new applicants for life insurance are required to have an HIV test, and if there are criteria for the testing.

Greg Van Horssen said the criteria are governed by thresholds of age and/or the amount of insurance. Hypothetically, State Farm uses the age range of 18 to 50 years and anyone who applies for \$50,000.00 or more is tested. Anyone who meets this criteria must be tested.

SENATOR CHRISTIAENS asked if the rule was still in place for a person who has purchased a life insurance and lives beyond 3 years, then dies from AIDS, the policy pay because it was not a pre-existing condition?

Greg Van Horssen said he didn't know the current status of that contractual language, but will get the information.

SENATOR CHRISTIAENS asked if this bill does anything to relieve the liability, because there are a number of provisions in the law for penalties for the inappropriate disclosure of information.

Greg Van Horssen said confidentiality remains intact.

SENATOR FRANKLIN asked if when the out-of-state licensee orders the test, the individual can get the results sent to their own health care provider.

Greg Van Horssen said yes, that is a requirement and is part of their written consent.

SENATOR DePRATU asked how the test is administered to be sure there is no substitute of the test sample.

Greg Van Horssen said it is administered by the applicant in the presence of an insurance agent.

Closing by Sponsor:

REP. ELLEN BERGMAN said, in the House hearing, there was a question about the confidentiality of sending the samples out of state, but there is no problem with this just because it is going out of the state.

HEARING ON HB 502

Sponsor: REP. LOREN SOFT, HD 12, Billings

Proponents: Dan Anderson, DPHHS

Gloria Hermanson, MT Psychological Assn.

Andrea Merrill, Mental Health Assn. of MT

Kathy McGowan, MT Council of Mental Health Centers

Bob Olson, MT Hospital Assn.

Bob Torres, MT Chapter National Assn. Social Workers
Vickie Frazier, Deputy County Attorney, L & C County

Opponents: Lonnie Olson, MT Advocacy Program
Bob Caldwell, Psychiatrist, Helena
Jill Long, self
Kathy Standard, Meriweather Lewis Institute
Suzanne Thweatt, self
Wesley Alcorn, MT Advocacy Program

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, said HB 502 is a mental illness voluntary commitment bill which addresses the issues of mental disorders and how the needs of those with mental disorders are addressed. This bill is needed because the Community Commitment Law will sunset in July, 1997. The whole mental health treatment delivery system is going to change with the start of mental health managed care on April 1, 1997.

The purpose of HB 502 is to continue to provide for community commitment for persons with mental disorders which allows for early intervention and to remain in the community in less restrictive and less expensive and more appropriate settings than the Montana State Hospital. It also allows for a commitment of 90 days instead of 30. Involuntary treatment of an individual is allowed when that person's mental disorder will result in deterioration to the point where he can no longer care for himself, if the condition is left untreated. The term "seriously mentally ill" is replaced with "person who suffered from a mental disorder." Referring to section 16, he said the current statutes are unclear regarding the consent for mental health treatment for minors. If a minor is at least 16 years old, a parent or guardian can see that the minor remains in treatment if they think that treatment is necessary, without resorting to a court order. Section 25 outlines who is financially responsible for those who are involuntarily committed and which is the responsible county of residence at the time of commitment because they are responsible for up to, and including, the transportation to the treatment facility. Pages 29-30 broadens the definition of potential community based on options which judges can utilize, and allows for involuntary medication by a physician, designated by the court or physician from a treatment facility to prevent further deterioration or hospitalization. Section 29 allows the mental health facility to maintain a current photograph of the patient for the protection and safety of the individual.

CHAIRMAN BENEDICT turned the Chair over to SENATOR JIM BURNETT.

Proponents' Testimony:

Dan Anderson, Administrator, Addictive and Mental Disorders Division, Department of Health and Human Services, said the Department brought this bill to REP. SOFT and came from a committee composed of providers, consumers, family members, and state agency people to primarily look at the sunseting of the

Community Commitment Law. They decided to reformulate the law and look at how involuntary commitments are made. This bill deals with a controversial topic, serious mental illness, parental consent, and involuntary treatment. This is a major move forward and will result in a better mental health law. He outlined sections of the bill and the changes made to current law.

{Tape: 1; Side: B; Approx. Time Count: 4:32 PM}

Gloria Hermanson, Montana Psychological Association, said they support HB 502 as it stands. It has been in the works for a long time and there has been extensive opportunity for input to this legislation.

Andrea Merrill, Executive Director, Mental Health Association of Montana, said they support this bill. Care needs to be taken with legislation and there are quite a few checks and balances in this bill. Listen to consumers because they know what the problems are.

Kathy McGowan, Montana Council of Mental Health Centers, said they support this bill and the comments made by **Andrea Merrill**.

Bob Olson, Montana Hospital Association, said they support HB 502 and have worked with the Department to develop more community-based services as an alternative to the Montana State Hospital.

Bob Torres, representing Montana Chapter National Association Social Workers, said they support HB 502 for the reasons previously stated. He wanted to state the concern of family members of the seriously mentally ill who require strict methods to deal with their illness. Until now family members had no recourse until the patient was a danger to himself and others to get treatment, but now family members can request commitment.

Vickie Frazier, Deputy County Attorney, L & C County, said they are responsible for filing the petitions for commitment brought to them. The Montana County Attorneys support this bill. It somewhat simplifies how commitments have been done and, under current law the patient would be sent to Warm Springs, but now there is a community-based option. There will be only one category of mental illness and a judge can determine the most appropriate facility for treatment of the individual.

Opponents' Testimony:

Lonnie Olson, Attorney, Montana Advocacy Program, said they oppose HB 502, but their opposition is not just on the law. They encourage early intervention for persons with mental illness. This bill doesn't provide for the right to privacy as it impacts informed consent for treatment. They would like to have an amendment that would require the district court to make a finding during a civil, involuntary commitment hearing, that the respondent is incompetent, incapable of making medical decisions before an order for forced treatment. (EXHIBIT 2)

Bob Caldwell, Psychiatrist, Helena, said he is involved, in and does all of the evaluations, for involuntary commitments in Lewis and Clark and Gallatin Counties. Many of the changes of HB 502 are necessary, but he is concerned that informed consent is not included. Informed consent consists of an individual's understanding the nature of his condition, the proposed treatment, alternative to treatment, including no treatment, and be able to rationally weigh the alternatives, with the rational person's standards, be able to make rational choice of treatment. All of the people who meet the criteria for commitment to either the state hospital or community facility, and are refusing treatment, probably are not competent to give informed consent and are appropriately, involuntarily medicated.

Jill Long, self, said life-saving medications are abused at mental health facilities when patients are involuntarily medicated without determining whether the individual is competent to give informed consent. (EXHIBIT 3)

Kathy Standard, President, Meriweather Lewis Institute, said the major concern for those with mental illness is the issue of informed consent. She can support HB 502 only if informed consent is included. (EXHIBIT 4)

Suzanne Thweatt, self, said she has been in treatment for depression and is presently in recovery because of medications. She described her treatment at Montana State Hospital, saying those who refused medications were labeled as troublemakers. Those with mental illness can make decisions most of the time and she thinks they should be given the opportunity to make decisions whenever possible. (EXHIBIT 5)

Wesley Alcorn, representing the PAIMI Advisory Council, Montana Advocacy Program, said they are a group of volunteers, consumers and mental health providers. They support community commitment but don't want it to become the cornerstone of treatment. Commitment is not the magic bullet. They support HB 502 only if informed consent is included.

Questions From Committee Members and Responses:

SENATOR LARRY BAER asked **REP. LOREN SOFT** if he would be adverse to amending the bill to require the court to find a patient incompetent prior to forced commitment and medication.

REP. SOFT said he wants this bill to be the best it can be. He read lines 13-14, page 30, and said that embodies what we're saying here.

SENATOR CHRIS CHRISTIAENS asked about the predictability of results and deterioration (pages 26 & 27), and how this would be dealt with by the court or commitment.

REP. SOFT deferred to **Beda Lovitt**.

Beda Lovitt said what they are looking at is early intervention to stop that progress toward a restricted environment. Often those with a serious mental illness are stable for quite a while, go off their medication, begin to decompensate and are not able to take care of themselves and may become dangerous. The predictability comes in through their history and that history is taken into account during commitment hearings. When making a determination, the court primarily looks at recent acts because they are the most relevant.

SENATOR CHRISTIAENS asked what time frame is used for the relevant history.

Beda Lovitt said a professional person will be testifying in court regarding the relevant history and giving their expert opinion. These criteria are only for community commitment not for in-patient commitment.

SENATOR CHRISTIAENS said he doesn't see anything about pre-directives for medications and asked if they are in this bill.

Beda Lovitt said there is nothing in this bill about pre-directives. Those directives are made available at the Montana State Hospital.

SENATOR JIM BURNETT asked REP. SOFT if other members of the family are allowed an input to the commitment process.

{Tape: 1; Side: A; Approx. Time Count: 5:15 PM}

REP. SOFT said they talked about that in regard to the treatment of a minor. If the minor was placed in a treatment facility, doesn't want to be there and wants to sign himself out, especially if he is older than 16 years, it is best for the parents to be involved in the decision process. Much more is accomplished when the total family is involved in the process with the treatment facility.

SENATOR DOROTHY ECK asked Lonnie Olson if he had specific amendments.

Lonnie Olson said he doesn't have them in the prescribed format, but will put them into correct form.

Closing by Sponsor:

REP. LOREN SOFT said he wants to make this bill the best bill as possible. He related a story of a patient who had many problems and was in a treatment facility and he read a note from the patient.

MONTANA ADVOCACY PROGRAM, Inc.**Protection & Advocacy for Persons with DisABILITIES**316 N. Park, Room 211 HB 502
P.O. Box 1680

Helena, Montana 59624

*Assistive Technology (AT)**Client Assistance Program (CAP)**Protection and Advocacy for Individuals with a Developmental Disability (PADD)**Protection and Advocacy for Individuals with a Mental Illness (PAIMI)**Protection and Advocacy of Individual Rights (PAIR)*

(406) 444-3889

(800) 245-4743 Voice/TDD

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March 14, 1997

TO: Senate Public Health Committee

FROM: Montana Advocacy Program

RE: HB 502

The Montana Advocacy Program (MAP) advocates for the rights of Montanans with disabilities, including persons with mental illnesses.

We have several concerns with HB 502, and offer suggested changes to the bill to address those concerns. Our proposed changes are double underlined. It is important to note that MAP supports efforts to make treatment available to persons with mental illness before those persons reach a severely deteriorated condition, however, we are concerned that this bill goes beyond that and severely affects the basic rights of persons with mental illness.

MAP's specific concerns are as follows:

§53-21-112 It is inconsistent that a 16 year old can consent to treatment absent parental ok, but can't request release from a treatment facility without parental ok if the parent instead of minor signed the voluntary. The minor should also be able to request release.

Minors can't consent to treatment, but they and not their parents or guardians can request an attorney. Parents and guardians should also be able to request an attorney.

§53-21-115 (1), (3) Consumers especially want reasonable notice of hearings to be able to be prepared (medications, grooming, clothing, witnesses, etc) for hearings.

§53-21-122 (2) provides reasonable notice of hearings to be able to be prepared (medications, grooming, clothing, witnesses, etc) for hearings.

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§53-21-127 (2)(c) and (2)(e)(vii) "unable to consent" This is the crux of our concern: absent an emergency situation, consent must be obtained or substituted judgment exercise after a judicial determination of incapacity, before involuntary medications are ordered.

It is curious that MAP, consumers, the Department, MHAM, MonAMI, MMA, etc, all agreed and testified that mental illness is a medical disorder deserving of insurance parity, yet we can't all agree that there be parity in the approach to providing invasive medical treatment. What other medical disorder would be subject to invasive treatment like involuntary medications without either an emergency situation, consent being obtained or substituted judgment being exercised after a judicial determination of incapacity? The answer is NO OTHER MEDICAL DISORDER is treated involuntarily, absent an emergency, without a determination that the person is unable to consent to treatment. Mental illness and incompetency are not synonymous, as this bill implies.

The amendments we offer simply require the court to make a determination that a person is unable to consent to treatment before it issues an order for involuntary medications.

§53-21-101 This suggested amendment provides a definition for "unable to consent to treatment", by adding a subsection (16), as follows:

(16) "unable to consent to treatment" means that a person lacks, due to mental disorder or other disability, sufficient understanding or capacity to make or communicate responsible decisions concerning his person or is so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

Thank you for your consideration of our concerns. Please adopt the proposed changes or vote no on the entire bill.

Missoula Office: 415 N. Higgins, Suite 2, Missoula, MT 59802; (406) 549-8464

Warm Springs Office: P.O. Box 177, Warm Springs, MT 59756; (406) 693-7035

E-Mail: advocate@lewis.MT.net

1 Section 16. Section 53-21-112, MCA, is amended to read:

2 "53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, ~~a minor~~
3 ~~who is 16 years of age or older a parent or guardian of a minor~~ may consent to receive mental health services
4 to be rendered to the minor by:

5 (a) a facility ~~that is not a state institution~~; or

6 (b) a person licensed in this state to practice medicine; or psychology

7 (c) a mental health professional licensed in this state.

8 (2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent
9 to receive mental health services from those facilities or persons listed in subsection (1).

10 ~~(2)(3)~~ Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission
11 of a minor to a mental health facility but not to the state hospital.

12 ~~(3)(4)~~ Except as provided by this subsection, voluntary admission of a minor to a mental health facility
13 for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A minor
14 voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be released
15 within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The~~ A minor himself who
16 has been admitted without consent by a parent or guardian, pursuant to subsection (2) or a minor who is at
17 least 16 years of age, may also make such a request and also has the right to be released within 5 days as
18 provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to
19 by the parent or guardian in the case of a minor patient and his counsel or consented to by the minor alone in
20 the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration
21 of 1 year. Counsel ~~shall~~ must be appointed for the minor at the minor's, parent's or guardian's request or at
22 any time ~~he~~ that the minor is faced with potential legal proceedings.

23
24 53-21-115. (Effective July 1, 1997) Procedural rights. In addition to any other rights ~~which that~~ may
25 be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this
26 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the
27 following rights:

28 (1) the right to receive notice at least 24 hours ~~reasonably~~ in advance of any hearing or other court
29 proceeding concerning him ~~the person~~;

30 (2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding

1 concerning him the person;
2 (3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in
3 support of a petition;
4 ~~(3)~~(4) the right in any hearing to cross-examine witnesses;
5 ~~(4)~~(5) the right to be represented by counsel;
6 ~~(5)~~(6) the right to remain silent;
7 ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable
8 to civil matters generally;
9 ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning him the person;
10 ~~(8)~~(9) the right to be examined by a professional person of his the person's choice when ~~such~~ the
11 professional person is willing and reasonably available;
12 ~~(9)~~(10) the right to be dressed in his the person's own clothes at any hearing held pursuant to this part;
13 and
14 ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held
15 pursuant to this part; AND
16 (12) THE RIGHT TO VOLUNTARILY TAKE NECESSARY MEDICATIONS PRIOR TO ANY HEARING
17 PURSUANT TO THIS PART."
18
19

1 **NEW AMENDMENT**

2
3 **53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on.** (1) The petition
4 shall be filed with the clerk of court who shall immediately notify the judge.

5 (2) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed.
6 If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the
7 respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of
8 his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent
9 may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint
10 a professional person and a friend of respondent and set a date and time for the hearing on the petition, which
11 may not be on the same day as the initial appearance and which may not exceed 5 days, including weekends
12 and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on
13 behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment
14 of the friend of respondent and in the confirmation of the appointment of the attorney.

15 (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the
16 petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable
17 cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date
18 and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless
19 the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the
20 respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace
21 with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the
22 clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the
23 respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the
24 resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the
25 county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk
26 of court by telephone as if the resident judge were personally present.

1

2 53-21-126. (Effective July 1, 1997) Trial or hearing on petition. (1) The respondent ~~shall~~ must be present
3 unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the respondent shall
4 must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to the determination of
5 whether or not the respondent is ~~seriously mentally ill within the meaning set forth in this part~~ suffering from
6 a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the
7 issues of whether the respondent is suffering from a mental disorder. If the court determines that the
8 respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires
9 commitment. In determining whether the respondent requires commitment, the court shall consider the
10 following:

11 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the
12 respondent's own basic needs, ~~OF such as~~ food, clothing, shelter, health, or safety;

13 (b) whether the respondent has recently, because of a mental disorder and through an act or an omission,
14 caused self-injury or injury to others;

15 (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others
16 because of the respondent's acts or omissions; and

17 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions,
18 will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which
19 the respondent will become a danger to self or to others or will be unable to provide for the respondent's own
20 basic needs, such as food, clothing, shelter, health, or safety. Predictability may be established by the
21 respondent's RELEVANT medical history.

22 (2) The standard of proof in ~~any a~~ hearing held pursuant to this section is proof beyond a reasonable doubt
23 with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, ~~except~~
24 ~~that. However, the respondent's mental disorders shall be evidenced~~ disorder must be proved to a reasonable
25 medical certainty. Imminent threat of self-inflicted injury or injury to others ~~shall be evidenced~~ must be proved
26 by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's
27 present condition.

28 (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject to
29 cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that, if,~~
30 However, if the issues are tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that

1 the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The written
2 report of the professional person that indicates the professional person's diagnosis may be attached to the
3 petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it
4 is contained in the report. The court may order the trial closed to the public for the protection of the
5 respondent.

6 (4) The professional person may testify as to the ultimate issue of whether the respondent is ~~seriously mentally~~
7 ~~ill~~ suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied
8 by evidence from the professional person or others that:

9 ~~(a) the respondent is suffering from a mental disorder, and~~

10 ~~(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or~~
11 ~~has deprived the person afflicted of the ability to protect his life or health~~

12 (a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own
13 basic needs, OF such as food, clothing, shelter, health, or safety;

14 (b) the respondent has recently, because of a mental disorder and through an act or an omission, caused
15 self-injury or injury to others;

16 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because
17 of the respondent's acts or omissions; or

18 (d) (i) the respondent's mental disorder;

19 (A) has resulted in RECENT ACTS, OMISSIONS OR BEHAVIORS that ~~creates~~ CREATE serious difficulty in
20 protecting the respondent's life or health;

21 (B) is treatable, with a reasonable prospect of success;

22 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment;
23 and

24 (iii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at
25 which the respondent will become a danger to self or to others or will be unable to provide for the respondent's
26 own basic needs, OF such as food, clothing, shelter, health, or safety. Predictability may be established by the
27 respondent's RELEVANT medical history.

28 (5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may
29 order a change of venue."
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2 53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent
3 is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment within the meaning
4 of this part, the respondent must be discharged and the petition dismissed.
5 (2) (a) If it is determined that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and
6 requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The
7 disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth
8 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and
9 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:
10 (i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;
11 (ii) commit the respondent to a community facility, program, or course of treatment for a period of not more
12 than 3 months;
13 ~~(iii)(iii)~~ order the respondent to be placed in the care and custody of a relative or guardian or some other
14 appropriate place other than an institution;
15 ~~(iii)(iv)~~ order outpatient therapy; or
16 ~~(iv)(v)~~ make some other appropriate order for treatment.
17 (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody or course of
18 treatment for a period of more than 3 months.
19 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall choose the least
20 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.
21 ~~The court shall consider and shall describe in its order what alternatives for treatment of the respondent are~~
22 ~~available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable.~~
23 The court may authorize the chief medical officer of a facility or a physician designated by the court to
24 administer appropriate medication involuntarily if the court finds that the respondent is unable to consent to
25 treatment and involuntary medication is necessary to protect the respondent, and or the public and or to
26 facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief
27 medical officer of the facility or a physician designated by the court approves it prior to the beginning of the
28 involuntary administration and unless, if possible, a medication review committee reviews it prior to the
29 beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the
30 beginning of the involuntary administration. The medication review committee must include at least one person

1 who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the
2 patient has one, must receive adequate written notice of the date, time, and place of the review and must be
3 allowed to appear and give testimony and evidence. The involuntary administration of medication must be again
4 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if
5 medication is still being involuntarily administered. The mental disabilities board of visitors and the director of
6 the department of public health and human services must be fully informed of the matter within 5 working days
7 after the beginning of the involuntary administration. The director shall report to the governor on an annual
8 basis. ~~The court shall enter into the record a detailed statement of the facts upon which it found the respondent~~
9 ~~to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found~~
10 ~~involuntary medication to be necessary.~~

11 (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter.
12 However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require
13 commitment only to a community facility and may not require commitment at the state hospital.

14 (e) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

15 (i) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental
16 disorder and requiring commitment;

17 (ii) the alternatives for treatment that were considered;

18 (iii) the alternatives available for treatment of the respondent;

19 (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

20 (v) the name of the facility, program, or individual to be responsible for the management and supervision of
21 the respondent's treatment;

22 (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from
23 among other alternatives; and

24 (vii) if the order includes involuntary medication, the reason the court found the respondent unable to consent
25 to treatment and the reason involuntary medication was chosen from among other alternatives; and

26 (viii) law enforcement officers may not be utilized to involuntarily administer medications. "
27
28
29
30

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2 "53-21-144. Rights concerning photographs and videotapes. (1) A person committed ~~admitted~~ to a mental
3 health facility may be photographed upon admission for identification purposes. ~~upon admission for~~
4 ~~identification and the or videotaped for the clinical or administrative purposes of the facility.~~ Such The
5 photographs ~~shall be or videotapes are~~ confidential and shall not be released by the facility except pursuant to
6 court order. Photographs of involuntarily committed persons may be released to a law enforcement agency
7 when needed to aid in the search for a person who has left a facility without authorization from the facility's
8 medical staff, AND WHEN IT IS DETERMINED THE PERSON IS A SELF-THREAT OR A THREAT OF DANGER
9 TO OTHERS AT THE TIME THAT THE PERSON LEFT THE FACILITY. A law enforcement agency may not
10 subsequently release photographs to the public or other persons unless authorized by a court order.
11 (2) ~~No other~~ Other nonmedical photographs ~~shall or videotapes may not~~ be taken or used without consent
12 of the patient or, if applicable, the patient's legal guardian or without a court order."
13

**Testimony for Public health, Welfare and Safety Committee
March 14, 1997**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SUBCOMMITTEE NO. 3
DATE 3/14/97
BILL NO. HB 502

Mr. Chairman and Members of the Committee:

My name is Jill Long, I have a mental illness, and I'm a concerned citizen. I live here in Helena. My concerns are that life-saving medications continue to be abused at mental health facilities in Montana during the current procedure to involuntarily medicate people, without first making a determination as to whether that individual is able to give their informed consent, as proposed by the Montana Advocacy Program, under Section 53-21-102 and 53-21-107.

Twice I was involuntarily medicated at MSH. While I may not have been in a condition to give my consent, this determination was not made. I had simply refused medication.

Twice I was given the drug Haldol without my consent and without being informed of the consequences; the possible risks as well as the possible benefits .

Twice I had a life threatening reaction to Haldol. This reaction is called Dystonia. My Dystonia was so severe that my jaw began to twist and clench so hard that I thought that my teeth would break. I began to swallow my tongue. Within minutes of receiving Haldol I.M., I was in danger of choking to death on my own tongue.

The first time was in December of 1992. The first time was enough for me and my physicians to know that I should never take Haldol. After I began to choke, I was immediately given a medication to counteract the Haldol, and the Haldol was discontinued.

The first time was a mistake and a terrifying learning experience for both my physicians and me.

The second time Haldol was administered to me involuntarily, under a court order, was in January of 1996, since I had again refused medication. The second time I was given Haldol there was documentation at MSH of the 1992 episode. Not only was my medical chart apparently not consulted, but I was again subjected to a life-threatening dystonic reaction from Haldol.

The second time I was medicated with Haldol I was not informed of the risks or benefits of the medication, nor was I asked if I wanted to be treated for my illness with this medication.

The second episode was not a mistake; it was a matter of routine misuse of the drug Haldol, and a total disregard for the medically ethical obligation known as Informed Consent.

Thank you.

Testimony for Public Health, Welfare & Safety Committee
March 14, 1997

Mr. Chairman and Members of the Committee:

My name is Kathy Standard and I currently serve as President of the Meriwether Lewis Institute, the only non-profit statewide organization in Montana created by and for people with mental illness. When I testified on behalf of HB 502 before the House Human Services Committee, my support was contingent on the addition of the amendments that the Montana Advocacy Program and mental health consumers had prepared. However, some of the amendments were not included when the Committee approved the Bill.

Of major concern to those of us with a mental illness was the issue of Informed Consent, which was left out of the final bill. I can support HB 502 now only if the amendments regarding Informed Consent are included. Otherwise, the Meriwether Lewis Institute Board of Directors stands opposed to the passage of this bill. Jill has just given you one excellent example of the misuse and dangers of Forced Medication. Lonnie Olson of MAP has explained the definition of Informed Consent. I wish to share my experience when my Bodily Integrity was violated by Forced Medication at MSH. The Rent-A-Doc on duty became angry with me, and ordered hourly enemas for me - His way of both retaliating and of saying that I was full of shit. People, I am a human being, first and foremost. I have dignity, and I have an instinct to protect myself from having unwanted drugs forced into my body. I believe I have the right to be included in any decision made about what chemicals are entering my body. I was certainly able to have made an Informed Decision; I simply wasn't consulted. I was 46 years of age at the time, and I had lived with my mental illness since I was 15. I had a pretty good idea what might help and what might not - and I knew that hourly enemas would not be of any help to me!

During that same commitment to MSH, I was given oral medications; no one would tell me what they were or why I was receiving them. I became extremely dizzy and light-headed, and finally passed out whenever I stood up. I requested that the dosage of whatever it was be lowered; I was told I would have to wait until the doctor happened to come over to the Ward I was on... that turned out to be 3 long days. I was told I had the option of refusing the medication, and I felt that was my only option, given my reaction to the medication. However, when I did refuse further medication until I could meet with the doctor, I was accused of being non-compliant and was labeled a "trouble maker". Somehow, many mental health professionals have bought the notion that the doctor always knows best; my experience has been that that is a fallacy! I've lived with this body a long time, and I know when it's getting whacked out due to psychotropic medications. My father, who was a physician, forcibly medicated me with Haldol for my entire senior year of high school, and I will never forget my shame and total embarrassment of staggering around the halls and not being able to focus on faces. I remember almost nothing of those 9 months - it is, quite literally, one big blur. If you wish, I can provide you with similar - and worse - horror stories from mental health consumers all across this country. These cover experiences at MSH, in local mental health facilities, and by consumers' private physicians....not to mention misguided parents.

Somewhere, way back in time, people with mental illness were deemed less than human - and certainly incapable of making decisions regarding medication. If I had any other illness, I would have to fight the question and/or refuse medication - insulin is not forced upon diabetics, steroids are not forced upon people with rheumatic diseases. Informed Consent - consenting to

treatment - means that I am included in all treatment decisions made about me. Is that asking so much? For all other illnesses, our society has to have a compelling reason to take away someone's rights. Forced medication is, by its nature, a denial of basic human rights that all other people are granted without question. Why am I denied that right? Why should I be subject to invasive medical treatment? Why has the Mental Division of DPHHS refused to grant me my legal right to make an informed decision about what happens to my body?

I urge you to pass HB 502 only if the issue of Informed Consent is directly addressed in the Bill. Testifying in Court is not my favorite thing, but you can count on me being there to do just that if we are denied our basic human right to refuse invasive bodily treatments.

Thank you.

March 14, 1997

Honorable committee member,

I have personally experienced involuntary commitment and found it to be a very dehumanizing experience. My concern with HB 502 is that people be guaranteed all the rights of any other citizen whenever possible. People with mental illness experiencing symptoms can still make decisions for themselves in most instances.

I know that rights can be violated because of my own experiences. Because of an angry, punitive psychiatrist and my own deprivation of information, I was handcuffed locked in seclusion for 24 hours with none of my usual meds. and no communication of my options. I was only informed of my commitment proceedings a few minutes after being released from seclusion and before my 1st hearing. I spent 3 weeks in February 1995. This is serious legislation that should contain all possible protection for individual rights.

Suzanne S. Thweatt

NAME Scott Small

ADDRESS 1008 N. Ewing #6, Helena

HOME PHONE 449-4782 WORK PHONE

REPRESENTING MLI (Mariwoth Lewis Institute)

APPEARING ON WHICH PROPOSAL? ~~HB~~ HB 502

DO YOU: SUPPORT X OPPOSE AMEND

COMMENTS:

support the bill with amendments added

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

NAME James L. Hanson

ADDRESS 1132 Clarke St. #3 Helena

HOME PHONE 449-3024 WORK PHONE _____

WORK PHONE

REPRESENTING M.L.I

APPEARING ON WHICH PROPOSAL? H.B. 502

DO YOU: SUPPORT ~~X~~ OPPOSE AMEND ~~X~~

SUPPORT ~~_____~~

OPPOSE _____

AMEND ~~X~~

COMMENTS:

1345T 60T Here

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Bill Long
ADDRESS 520 Logan #209
HOME PHONE (M) 443-3708 WORK PHONE _____
REPRESENTING Self
APPEARING ON WHICH PROPOSAL? H/B 502
DO YOU: SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS:

I am a consumer of mental
health services

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/14/97

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SSR 16, HB 412, 502

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
SANDRA Michelish	MTNHHS Montana Alliance for the Mentally Ill	HB 502	✓	
Robert Caldwell MD	Self	HB 502		✓
Andrea Merrill	Mental Health Assoc	HB 502	✓	
MIKE HAWSHGLW	DPHHS	SSR 16	✓	
Sandra Michelish	Self	HB 502	✓	
Glenn Skinner	MT Psych Assoc	HB 502	✓	
Wesley J. Allen	PAIMI HIC	HB 502		✓
Bob Olsen	MT Hospital Assoc	HB 502	✓	
Robert L. Turner	MT CH NASW	HB 502	✓	
KATHY McGowan	MCNHC	HB 502	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/14/97

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SDR 16, HB 412, 502

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Kathleen Martin	DPHHS	HB 412	✓	
Lonnie Olson	MAP	HB 502		X
Ben Abraham	State Farm Ins.	HB 412	✓	
Greg Van Housen	State Farm Ins.	HB 412	✓	
Victor Anzies	INT City Assoc	HB 502	✓	
Sophie Price	MLI + Consumers	HB 502	with amendments	without amendments
Vernier Bertelson	Montana Social Citizens	SDR 16	✓	
Dorothea Bertelson	Self	SDR 16	✓	
Kathy Standaert	MLI	HB 502	with amendments	without amendments
Suzanne S. Thweatt	Self	HB 502	with amendments	without amendments
Jill LOWE	SELF	HB 502	with amendments	without amendments
Sally Klein	DPHHS	412	✓	
Charlie Briggs	Mt. Agencies in Aging	SDR 16	✓	
Dan Anderson	DPHHS	502	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By SENATOR BOB DePRATU, on March 21, 1997, at
3:17 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karlolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 386, HB 146, 3/7/97
Executive Action: HB 502, HB 333, HB 129, HB 558

HEARING ON HB 386

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents: Charles Lorensen, self
Helen Barbara Lange, self
Verdell Jackson, self
Betty Asplin, Family for Families
Kenneth Haugen, Family for Families
Glen Hage, self
Casey George, self
Frank Fitzgerald, self

Opponents: Hank Hudson, Department of Health
Jean Whittinghill, Court Assessment Program
Mary Alice Cook, Lobbyist for Children & Families

Hank Hudson said this bill would be funded through the block grant and not SB 374.

Closing by Sponsor:

REP. ROYAL JOHNSON said the amendments take care of the problem.

EXECUTIVE ACTION ON HB 502

Motion: SENATOR CHRIS CHRISTIAENS moved HB 502 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the AMENDMENTS (HB 050202.asf) to HB 502 DO PASS. (EXHIBIT 8)

Discussion: SENATOR CHRISTIAENS explained the amendments. This bill gives the individual, who going to appear for an involuntary commitment, time to receive the information.

CHAIRMAN BENEDICT asked if REP. SOFT agreed with these amendments.

SENATOR CHRISTIAENS said he didn't know.

Beda Lovitt, Department of Health, said she had spoken with REP. SOFT about this amendment, and he has no objection.

CHAIRMAN BENEDICT said he and SENATOR THOMAS had had communication from their county attorney about the amendments.

Beda Lovitt said the County Attorneys Association has no objections.

Vote: The DO PASS motion for the AMENDMENTS to HB 502 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR CHRISTIAENS moved HB 502 BE CONCURRED IN AS AMENDED. The motion CARRIED with SENATOR ESTRADA voting NO.

SENATOR MIGNON WATERMAN will carry HB 502.

EXECUTIVE ACTION ON HB 333

Motion: SENATOR CHRIS CHRISTIAENS moved HB 333 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the AMENDMENTS (HB033301.ASF) to HB 333 DO PASS. (EXHIBIT 9)

Discussion: SENATOR CHRISTIAENS said as the bill was presented to the committee, it excluded Native Americans on Indian reservations and he felt they needed to be included.

SENATOR FRED THOMAS asked if REP. SOFT had agreed to these amendments.

Amendments to House Bill No. 502
Third Reading Copy

Requested by Senator Christiaens
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan Byorth Fox
March 20, 1997

1. Title, line 12.
Following: "53-21-121,"
Insert: "53-21-122,"

2. Page 23.
Following: line 27
Insert: "

Section 20. Section 53-21-122, MCA, is amended to read:
"53-21-122. (Temporary) Petition for commitment -- filing
of -- initial hearing on. (1) The petition shall be filed with
the clerk of court who shall immediately notify the judge.

(2) (a) If a judge is available, he shall consider the
petition, and if he finds no probable cause, it shall be
dismissed.

(b) (i) If the judge finds probable cause, counsel shall be
immediately appointed for the respondent, and the respondent
shall be brought forthwith before the court with his counsel. The
respondent shall be advised of his constitutional rights, his
rights under this part, and the substantive effect of the
petition. The respondent may at this appearance object to the
finding of probable cause for filing the petition.

(ii) The judge shall:

- (A) appoint a professional person;
- (B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition,
which may not exceed 5 days, including weekends and holidays,
unless the fifth day falls upon a weekend or holiday and unless
additional time is requested on behalf of the respondent.

(iii) The desires of the respondent shall be taken into
consideration in the appointment of the friend of respondent and
in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk
shall notify a resident judge by telephone and read the petition
to him. If the judge finds no probable cause, the petition shall
be dismissed. If the judge finds probable cause, he shall cause
the clerk to issue an order appointing counsel and a professional
person and setting a date and time for the hearing on the
petition, which may not exceed 5 days, including weekends and
holidays, unless the fifth day falls upon a weekend or holiday
and unless additional time is requested on behalf of the
respondent. The order shall also direct that the respondent be
brought forthwith before a justice of the peace with his counsel
to be advised of his constitutional rights, his rights under this
part, and the contents of the clerk's order, as well as to
furnish him with a copy. The justice of the peace shall ascertain
the desires of the respondent with respect to the appointment of

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his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present. (Terminates July 1, 1997-sec. 1, Ch. 541, L. 1989.)

53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on. (1) The petition ~~shall~~ must be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, ~~he~~ the judge shall consider the petition, and if ~~he~~ the judge finds no probable cause, it ~~shall~~ must be dismissed. If the judge finds probable cause, counsel ~~shall~~ must be immediately appointed for the respondent, and the respondent ~~shall~~ must be brought ~~forthwith~~ before the court with ~~his~~ the respondent's counsel. The respondent ~~shall~~ must be advised of ~~his~~ the respondent's constitutional rights, ~~his~~ the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition, ~~which that may not be on the same day as the initial appearance and that~~ may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ must be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and ~~shall~~ read the petition to ~~him~~ the judge. If the judge finds no probable cause, the petition ~~shall~~ must be dismissed. If the judge finds probable cause, ~~he~~ the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, ~~which that may not be on the same day as the initial appearance and that~~ may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall must also direct that the respondent be brought forthwith before a justice of the peace with his the respondent's counsel to be advised of his the respondent's constitutional rights, his the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish him the respondent with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

Renumber: subsequent sections



SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 24, 1997

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill 502 (third reading copy -- blue), respectfully report that House Bill 502 be amended as follows and as so amended be concurred in.

Signed: Steve Benedict

Senator Steve Benedict, Chair

That such amendments read:

1. Title, line 12.

Following: "53-21-121,"

Insert: "53-21-122,"

2. Page 23.

Following: line 27

Insert: "

Section 20. Section 53-21-122, MCA, is amended to read:

"53-21-122. (Temporary) Petition for commitment -- filing of -- initial hearing on. (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed.

(b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition.

(ii) The judge shall:

(A) appoint a professional person;

(B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(iii) The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk

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Sec. of Senate

Waterman

Senator Carrying Bill

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shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present. (Terminates July 1, 1997-sec. 1, Ch. 541, L. 1989.)

53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on. (1) The petition ~~shall~~ must be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, ~~he~~ the judge shall consider the petition, and if ~~he~~ the judge finds no probable cause, it ~~shall~~ must be dismissed. If the judge finds probable cause, counsel ~~shall~~ must be immediately appointed for the respondent, and the respondent ~~shall~~ must be brought forthwith before the court with ~~his~~ the respondent's counsel. The respondent ~~shall~~ must be advised of ~~his~~ the respondent's constitutional rights, ~~his~~ the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition, ~~which that may not be on the same day as the initial appearance and that~~ may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ must be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and ~~shall~~ shall read the petition to ~~him~~ the judge. If the judge finds no probable cause, the petition ~~shall~~ must be dismissed. If the judge finds probable

cause, ~~he~~ the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, ~~which that may not be on the same day as the initial appearance and that~~ may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order ~~shall~~ must also direct that the respondent be brought ~~forthwith~~ before a justice of the peace with ~~his~~ the respondent's counsel to be advised of ~~his~~ the respondent's constitutional rights, ~~his~~ the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish ~~him~~ the respondent with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of ~~his~~ counsel, and this ~~shall~~ information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

Renumber: subsequent sections

-END-

DATE 3-21-97

SENATE COMMITTEE ON HB 386 DPHHS

BILLS BEING HEARD TODAY: HB 386, 146 502

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Helen Barbata Lange	FACT	386	✓	
KENNETH E. HAUGEN	FAMILY FOR FAMILIES	386	✓	
Betty L. Asplin	" " "	386	✓	
Lonnie Olson	MAP	502		X
CHARLES J. LORENTZEN	SELF	386	✓	
Vurdell Oachman	Self		✓	
Norm Bell	Self	386	✓	
Steve Karp	Self	386	✓	
Kathy STANDARD	M.L.I.	502		
Bill Long	Self	502		
Jean Whittinghill	Mt. Assessment Proxy	386		X
Mike Barrett	Ind. prod. + % Ad	146 (146)		
Joseph Nusselt	SELF	386	X	
Delma Morris Fitzgerald	SELF	386	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE BILL NO. 502

INTRODUCED BY SOFT, WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS; AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323, 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112, 53-21-115, 53-21-116, 53-21-121, 53-21-122, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-16-501, MCA, is amended to read:

"2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously mentally ill~~ suffers from a mental disorder and is in need of commitment;

(3) ~~his~~ resignation of the incumbent;

(4) ~~his~~ removal of the incumbent from office;

(5) ~~he~~ the incumbent's ceasing to be a resident of the state or, if the office ~~he~~ is local, of the district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within which the duties of ~~his~~ the incumbent's office are required to be discharged;

(6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent of a felony or of ~~any~~ an offense involving moral turpitude or
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or
10 appointment."

11

12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 **"2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared
16 void, the body, judge, or officer before whom the proceedings were ~~had must~~ conducted shall give notice
17 ~~thereof of the proceedings~~ to the officer authorized to fill the vacancy."

18

19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 **"25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~
21 ~~or~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor
22 or other person must shall appear either by ~~his~~ general guardian, if ~~he~~ the minor or other person has one,
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill or~~ incompetent person, or person who has been committed
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~ an
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application
30 of a relative or friend;

1 (c) in ~~any~~ a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the
2 justice's own motion.

3 (2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed
4 pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is
5 returned or before the answer:

6 (a) in the case of a minor who is 14 or more years old and who applies before the summons is
7 returned or at the time of the return, upon the application of the minor;

8 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an
9 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application
10 of a relative or friend or any other party to the action;

11 (c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the
12 justice's own motion."

13
14 **Section 4.** Section 27-2-401, MCA, is amended to read:

15 **"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to
16 bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either
17 a minor ~~or seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not
18 a part of the time limit for commencing the action. However, the time limit cannot be extended more than
19 5 years by the disability of ~~serious mental illness~~ commitment.

20 (2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of
21 the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities
22 mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to
23 recover damages. In the action, the person may recover the sum or the value of the property that the
24 person would have received upon the final distribution of the estate if an action had been ~~seasonably~~
25 commenced in a timely manner by the personal representative.

26 (3) A person may not claim a disability unless it existed when the right of action or entry accrued.

27 (4) When both disabilities referred to in subsection (1) coexist at the time that the right of action
28 or entry accrues, the limitation does not attach until both are removed."

29
30 **Section 5.** Section 27-8-204, MCA, is amended to read:

1 **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested
2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or
3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~
4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal
5 relations ~~in respect thereto~~:

6 (1) to ascertain any class of creditors, devisees, heirs, or others;

7 (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular
8 act in their fiduciary capacity; or

9 (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including
10 questions of construction of wills and other writings."

11
12 **Section 6.** Section 33-20-121, MCA, is amended to read:

13 **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not
14 be delivered or issued for delivery in this state if it contains a provision:

15 (a) for a period shorter than that provided by statute within which an action at law or in equity may
16 be commenced on the policy; or

17 (b) that excludes or restricts liability for death caused in a certain specified manner or occurring
18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting
19 coverage as specified in the policy in the event of death:

20 (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces
21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian
22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air
23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24 (ii) as a result of aviation ~~or any~~ air travel, or flight;

25 (iii) as a result of a specified hazardous occupation or occupations;

26 (iv) while the insured is a resident outside the continental United States and Canada; or

27 (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~
28 ~~mentally ill~~ committed pursuant to 53-21-127, or otherwise. If a life insurance policy contains a dependent
29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30 (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide

1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the
2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve
3 valuation method on the basis of the mortality table and interest rate specified in the policy for the
4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed
5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by
6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,
8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to
9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more
11 favorable to the policyholder than a provision permitted by this section."

12
13 **Section 7. Section 37-3-323, MCA, is amended to read:**

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation
15 whenever it is brought to its attention that there is reason to suspect that a person having a license or
16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a
18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared
19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared
20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it
21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for
25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of
28 these conditions or the commission of these offenses and may, upon order of the board, include requiring
29 the person to submit to a physical examination or a mental examination, or both, by a physician or
30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part
2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or
4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~
5 ~~ill or~~ to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127,
6 the person's license may be suspended by the board. The suspension continues until the licensee is found
7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to
8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of
9 the board."

10
11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for
13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus
14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed
16 podiatrist:

- 17 (a) is mentally or physically unable to engage safely in the practice of podiatry;
18 (b) has procured the license by fraud, misrepresentation, or through error;
19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later
20 been lawfully declared competent;
21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it
22 incapacitates the licensee in the safe performance of professional duties;
23 (e) has been found guilty of unprofessional conduct;
24 (f) has practiced podiatry while the license was suspended or revoked;
25 (g) has had the license suspended or revoked by any licensing authority for reasons other than
26 nonpayment of fees; or
27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged
29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation
30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies ~~shall~~ must be released to the board on written request.

(4) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until the licensee is discharged as restored to reason or cured and the licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

Section 9. Section 37-11-321, MCA, is amended to read:

"37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, ~~of this title;~~

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this title;~~

(5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy or practice as an assistant;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to be ~~seriously mentally ill~~ require further commitment;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or assistant or of conduct detrimental to the best interests of the public; or

1 (10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation
2 of the person's training and education."

3
4 **Section 10.** Section 37-12-322, MCA, is amended to read:

5 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever
6 it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic;

7 (a) has a mental or physical condition ~~such~~ that renders the person ~~is~~ unable to safely engage in
8 the practice of chiropractic;

9 (b) has been declared incompetent or ~~seriously mentally ill~~ has been committed pursuant to
10 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or
11 released from supervision;

12 (c) has procured the license through mistake;

13 (d) has been guilty of unprofessional conduct;

14 (e) has practiced chiropractic while the license was suspended or revoked;

15 (f) has while under probation violated its terms.

16 (2) The investigation must be for the purpose of determining the probability of the existence of
17 these conditions or the commission of these offenses and may, upon order of the board, include requiring
18 the person to submit to a physical or mental examination, or both, by a physician or physicians selected
19 by the board if it appears to be in the best interests of the public that this evaluation be secured. The board
20 may examine the hospital records and reports of the licensee as part of the examination, and copies of
21 these must be released to the board on written request."

22
23 **Section 11.** Section 41-5-523, MCA, is amended to read:

24 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**
25 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
26 in need of supervision, the youth court may enter its judgment making one or more of the following
27 dispositions:

28 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

29 (b) place the youth on probation;

30 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state

1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
4 the judge that space is available for the youth at that facility. The sentencing judge may not place
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
10 placement recommendations from the youth placement committee. The judge may not place the youth in
11 an in-state residence unless the department informs the judge that resources are available for placement
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
19 finds that the placement is necessary for the protection of the public. The court may order the department
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
30 or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a state youth correctional facility.

(ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical,

1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

2 (10) If a youth is committed to the department, the court shall examine the financial ability of the
3 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
4 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
5 care.

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
8 an amount based on the uniform child support guidelines adopted by the department of public health and
9 human services pursuant to 40-5-209.

10 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
11 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
12 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
13 nevertheless subject to withholding for the payment of the contribution without need for an amendment
14 of the support order or for any further action by the court.

15 (b) A court-ordered exception from contributions under this section must be in writing and be
16 included in the order. An exception from the immediate income withholding requirement may be granted
17 if the court finds there is:

18 (i) good cause not to require immediate income withholding; or

19 (ii) an alternative arrangement between the department and the person who is ordered to pay
20 contributions.

21 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
22 based upon:

23 (i) a written determination and explanation by the court of the reasons why the implementation of
24 immediate income withholding is not in the best interests of the youth; and

25 (ii) proof of timely payment of previously ordered support in cases involving modification of
26 contributions ordered under this section.

27 (d) An alternative arrangement must:

28 (i) provide sufficient security to ensure compliance with the arrangement;

29 (ii) be in writing and be signed by a representative of the department and the person required to
30 make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 12. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant ~~is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require commitment, or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

Section 13. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as
2 provided in 53-21-115 through 53-21-118.

3 (2) In addition, the parents or guardian of a respondent have the right to:

4 (a) be present at any hearing held pursuant to this part;

5 (b) be represented by counsel in any hearing;

6 (c) offer evidence and cross-examine witnesses in any hearing; and

7 (d) have the respondent examined by a professional of their choice when a professional is
8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible
9 person appointed by the court."

10
11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 **"53-21-101. Purpose.** The purpose of this part is to:

13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder
14 such and requiring commitment the care and treatment ~~as will be~~ suited to the needs of the person and to
15 ~~insure~~ ensure that ~~such~~ the care and treatment are skillfully and humanely administered with full respect
16 for the person's dignity and personal integrity;

17 (2) accomplish this goal whenever possible in a community-based setting;

18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are
19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~
20 suffering from a mental disorder and requires commitment; and

21 (4) ~~assure~~ ensure that due process of law is accorded any person coming under the provisions of
22 this part."

23
24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

26 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
27 created by 2-15-211.

28 (2) "Court" means any district court of the state of Montana.

29 (3) "Department" means the department of public health and human services provided for in
30 2-15-2201.

1 (4) "Emergency situation" means a situation in which any person is in imminent danger of death
2 or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

3 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of
7 a charitable or religious organization, or any other person appointed by the court to perform the functions
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation
11 of the friend of respondent.

12 (6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial
13 adverse effects on an individual's cognitive or volitional functions. The term does not include:

14 (a) addiction to drugs or alcohol; or

15 (b) drug or alcohol intoxication.

16 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which
17 is equipped and staffed to provide treatment for persons with mental disorders or a community mental
18 health center or any mental health clinic or treatment center approved by the department. A correctional
19 institution or facility or jail is not a mental health facility within the meaning of this part.

20 (8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted
21 injury or injury to others or the imminent threat of injury but which:

22 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health
23 even with the available assistance of family, friends, or others;

24 (b) is treatable, with a reasonable prospect of success and consistent with the least restrictive
25 course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be
26 committed;

27 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

28 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for
29 treatment; and

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may
2 be established by the patient's medical history.

3 (9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult
4 brothers and sisters of a person.

5 (10) "Patient" means a person committed by the court for treatment for any period of time or who
6 is voluntarily admitted for treatment for any period of time.

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

8 (12) "Professional person" means:

9 (a) a medical doctor; or

10 (b) a person who has been certified, as provided for in 53-21-106, by the department.

11 (13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a
12 professional person.

13 (14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally
14 ill or seriously mentally ill.

15 (15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in
16 self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person
17 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.
18 A person may not be involuntarily committed to a mental health facility or detained for evaluation and
19 treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering
20 from a mental disorder unless the condition causes the person to be seriously mentally ill within the
21 meaning of this part.

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541,
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions
25 apply:

26 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
27 created by 2-15-211.

28 (2) "Commitment" means an order by a court requiring an individual to receive treatment for a
29 mental disorder.

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.

1 ~~(3)~~(4) "Department" means the department of public health and human services provided for in
2 2-15-2201.

3 ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death
4 or ~~serious~~ bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from
5 a mental disorder and appears to require commitment.

6 ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15 ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17 (a) addiction to drugs or alcohol; ~~or~~

18 (b) drug or alcohol intoxication;

19 (c) mental retardation; or

20 (d) epilepsy.

21 ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital
22 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community
23 mental health center or any mental health clinic or treatment center approved by the department. A
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25 ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult
26 brothers and sisters of a person.

27 ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or
28 who is voluntarily admitted for treatment for any period of time.

29 ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~police man~~ police officer, or
30 other peace officer.

~~(11)~~(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill suffering from a mental disorder and requiring commitment.

~~(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part.~~

(15) "State hospital" means the Montana state hospital."

Section 16. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older a parent or guardian of a minor may consent to receive mental health services to be rendered to the minor by:

(a) a facility ~~that is not a state institution~~; or

(b) a person licensed in this state to practice medicine; or ~~psychology~~

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

~~(2)~~(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

~~(3)~~(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

1 released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The A~~ A minor
2 ~~himself~~ who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may
3 ~~also make such a request and also has the right to be released within 5 days as provided in 53-21-111(3).~~
4 Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian
5 in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor
6 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel
7 ~~shall~~ must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with
8 potential legal proceedings.

9 ~~(4) If, in any application for voluntary admission for any period of time to a mental health facility,~~
10 ~~a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the~~
11 ~~application for admission shall be treated as a petition for involuntary commitment. Notice of the substance~~
12 ~~of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous~~
13 ~~location on any form or application used for the voluntary admission of a minor to a mental health facility.~~
14 ~~The notice shall be explained to the minor."~~

15
16 **Section 17.** Section 53-21-115, MCA, is amended to read:

17 **"53-21-115. (Temporary) Procedural rights.** In addition to any other rights ~~which~~ that may be
18 guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this
19 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has
20 the following rights:

21 (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning
22 him the person;

23 (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who
24 will testify in support of the petition;

25 (3) the right to know, before a hearing, the names and addresses of any witnesses who will testify
26 in support of a petition;

27 ~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any
28 proceeding concerning him the person;

29 ~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

30 ~~(5)(6)~~ the right to be represented by counsel;

1 ~~(6)~~(7) the right to remain silent;

2 ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable

3 to civil matters generally;

4 ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

5 ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~

6 professional person is willing and reasonably available;

7 ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this

8 part; and

9 ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing

10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

11 **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which that~~

12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or

13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this

14 part has the following rights:

15 (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning

16 ~~him~~ the person;

17 (2) the right in any hearing to be present, to offer evidence, and to present witnesses in any

18 proceeding concerning ~~him~~ the person;

19 (3) the right to know, before a hearing, the names and addresses of any witnesses who will testify

20 in support of a petition;

21 ~~(3)~~(4) the right in any hearing to cross-examine witnesses;

22 ~~(4)~~(5) the right to be represented by counsel;

23 ~~(5)~~(6) the right to remain silent;

24 ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable

25 to civil matters generally;

26 ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

27 ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such the~~

28 professional person is willing and reasonably available;

29 ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this

30 part; and

1 ~~(10)(11)~~ the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing
2 held pursuant to this part; AND

3 (12) THE RIGHT TO VOLUNTARILY TAKE NECESSARY MEDICATIONS PRIOR TO ANY HEARING
4 PURSUANT TO THIS PART."

5
6 Section 18. Section 53-21-116, MCA, is amended to read:

7 **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The
8 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.
9 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,
10 who shall be compensated from the public funds of the county where the respondent resides. (Terminates
11 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

12 **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**
13 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring
14 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge
15 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who ~~shall~~ must be
16 compensated from the public funds of the county where the respondent resides."

17
18 Section 19. Section 53-21-121, MCA, is amended to read:

19 **"53-21-121. (Temporary) Petition for commitment -- contents of -- notice of.** (1) The county
20 attorney, upon the written request of any person having direct knowledge of the facts, may file a petition
21 with the court:

22 (a) alleging that there is a person within the county who is seriously mentally ill and requesting that
23 the person be committed to a mental health facility for a period of no more than 3 months; or

24 (b) alleging that there is a person within the county who is mentally ill and requesting that the
25 person be committed to a mental health facility for a period of no more than 30 days.

26 (2) The petition shall contain:

27 (a) the name and address of the person requesting the petition and his interest in the case;

28 (b) the name of the respondent and, if known, the address, age, sex, marital status, and
29 occupation of the respondent;

30 (c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of. (1) The county attorney, upon the written request of any person HAVING DIRECT KNOWLEDGE OF THE FACTS, may file a petition with the court alleging that there is a person within the county who is ~~seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months~~ suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition ~~shall~~ must contain:

(a) the name and address of the person requesting the petition and ~~his~~ the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and

1 occupation of the respondent;

2 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the
3 disposition sought pursuant to 53-21-127(2), and the need for commitment;

4 (d) the name and address of every person known or believed to be legally responsible for the care,
5 support, and maintenance of the ~~person~~ respondent for whom evaluation is sought;

6 (e) the name and address of the ~~person's~~ respondent's next of kin to the extent known to the
7 county attorney and the person requesting the petition;

8 (f) the name and address of any person whom the county attorney believes might be willing and
9 able to be appointed as friend of respondent;

10 (g) the name, address, and telephone number of the attorney, if any, who has most recently
11 represented the ~~person~~ respondent for whom evaluation is sought; if there is no attorney, there ~~shall~~ must
12 be a statement as to whether to the best knowledge of the person requesting the petition the ~~person~~
13 respondent for whom evaluation is sought is indigent and ~~therefore~~ unable to afford the services of an
14 attorney; and

15 (h) a statement of the rights of the respondent, which ~~shall~~ must be in conspicuous print and
16 identified by a suitable heading.

17 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the
18 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of
19 the peace. THE RESPONDENT'S COUNSEL SHALL MEET WITH THE RESPONDENT, EXPLAIN THE
20 SUBSTANCE OF THE PETITION, AND EXPLAIN THE PROBABLE COURSE OF THE PROCEEDINGS. Notice
21 of the petition and the order setting the date and time of the hearing and the names of the respondent's
22 counsel, professional person, and friend of respondent ~~shall~~ must be hand-delivered or mailed to the person
23 or persons legally responsible for care, support, and maintenance of the respondent, the next of kin
24 identified in the petition, and any other person identified by the county attorney as a possible friend of
25 respondent other than the one named as the friend of respondent. The notice may provide, other than as
26 to the respondent and ~~his~~ the respondent's counsel, that no further notice will be given unless written
27 request is filed with the clerk of court."

28
29 **SECTION 20. SECTION 53-21-122, MCA, IS AMENDED TO READ:**

30 "53-21-122. (Temporary) Petition for commitment -- filing of -- initial hearing on. (1) The petition

1 shall be filed with the clerk of court who shall immediately notify the judge.

2 (2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it
3 shall be dismissed.

4 (b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent,
5 and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be
6 advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The
7 respondent may at this appearance object to the finding of probable cause for filing the petition.

8 (ii) The judge shall:

9 (A) appoint a professional person;

10 (B) appoint a friend of respondent; and

11 (C) set a date and time for the hearing on the petition, which may not exceed 5 days, including
12 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is
13 requested on behalf of the respondent.

14 (iii) The desires of the respondent shall be taken into consideration in the appointment of the friend
15 of respondent and in the confirmation of the appointment of the attorney.

16 (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and
17 read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge
18 finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional
19 person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including
20 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is
21 requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith
22 before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this
23 part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace
24 shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall
25 be immediately communicated to the resident judge. The resident judge may appoint other counsel, may
26 confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and
27 may do all things necessary through the clerk of court by telephone as if the resident judge were personally
28 present. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

29 **53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on. (1)**

30 The petition ~~shall~~ must be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, ~~he~~ the judge shall consider the petition, and if ~~he~~ the judge finds no probable cause, it ~~shall~~ must be dismissed. If the judge finds probable cause, counsel ~~shall~~ must be immediately appointed for the respondent, and the respondent ~~shall~~ must be brought ~~forthwith~~ before the court with ~~his~~ the respondent's counsel. The respondent ~~shall~~ must be advised of ~~his~~ the respondent's constitutional rights, ~~his~~ the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition, ~~which~~ that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ must be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and ~~shall~~ read the petition to ~~him~~ the judge. If the judge finds no probable cause, the petition ~~shall~~ must be dismissed. If the judge finds probable cause, ~~he~~ the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, ~~which~~ that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order ~~shall~~ must also direct that the respondent be brought ~~forthwith~~ before a justice of the peace with ~~his~~ the respondent's counsel to be advised of ~~his~~ the respondent's constitutional rights, ~~his~~ the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish ~~him~~ the respondent with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of ~~his~~ counsel, and this ~~shall~~ information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

Section 21. Section 53-21-123, MCA, is amended to read:

"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation

1 of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the
2 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination
3 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney
4 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the
5 court, with copies to the respondent's attorney and the county attorney. If the professional person
6 recommends commitment, the professional person's written report must contain a statement of the
7 professional person's recommendations to the court for disposition under 53-21-127(2).

8 (2) The following action ~~shall~~ must be taken based on the professional person's findings:

9 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally
10 notify counsel and the respondent, if ~~he~~ the respondent has been detained, ~~shall~~ must be released and the
11 petition dismissed. However, the county attorney may, upon good cause shown, request the court to order
12 an additional, but no more than one, examination by a different professional person for a period of no more
13 than 4 hours.

14 (b) If ~~he~~ the court finds that commitment proceedings should continue, the hearing ~~shall~~ must be
15 held as scheduled.

16 (3) The court may not order further evaluation pending the hearing unless sound medical reasons
17 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,
18 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

19 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**
20 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice
21 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable
22 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately
23 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~
24 the examination to the court, with copies to the respondent's attorney and the county attorney. If the
25 professional person recommends commitment, the professional person's written report must contain a
26 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

27 (2) The following action ~~shall~~ must be taken based on the professional person's findings:

28 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally
29 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county
30 attorney may, upon good cause shown, request the court to order an additional, but no more than one,

1 examination by a different professional person for a period of no more than 4 hours.

2 (b) If ~~he~~ the court finds that commitment proceedings should continue, the hearing ~~shall~~ must be
3 held as scheduled.

4 (3) The court may not order further evaluation pending the hearing unless sound medical reasons
5 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,
6 along with the amount of additional time needed."

7
8 **Section 22.** Section 53-21-126, MCA, is amended to read:

9 **"53-21-126. (Temporary) Trial or hearing on petition.** (1) The respondent shall be present unless
10 his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all
11 stages of the trial. The trial shall be limited to the determination of whether or not the respondent is
12 mentally ill or seriously mentally ill within the meaning set forth in this part.

13 (2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable
14 doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other
15 matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat
16 of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to
17 be material and relevant as to the respondent's present condition.

18 (3) The professional person appointed by the court shall be present for the trial and subject to
19 cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried
20 by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally
21 ill. The written report of the professional person that indicates the professional person's diagnosis may be
22 attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible
23 merely because it is contained in the report. The court may order the trial closed to the public for the
24 protection of the respondent.

25 (4) The professional person may testify as to the ultimate issue of whether the respondent is
26 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on
27 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in
28 53-21-102.

29 (5) The court, upon the showing of good cause and when it is in the best interests of the
30 respondent, may order a change of venue. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-126. (Effective July 1, 1997) Trial or hearing on petition. (1) The respondent ~~shall~~ must be present unless ~~he~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the respondent ~~shall~~ must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in this part~~ suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs, such as OF food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs, such as OF food, clothing, shelter, health, or safety. Predictability may be established by the respondent's RELEVANT medical history.

(2) The standard of proof in ~~any~~ a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, ~~except that~~. However, the respondent's mental ~~disorders shall be evidenced~~ disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others ~~shall be evidenced~~ must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that~~ if. However, if the issues are tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The

1 written report of the professional person that indicates the professional person's diagnosis may be attached
2 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely
3 because it is contained in the report. The court may order the trial closed to the public for the protection
4 of the respondent.

5 (4) The professional person may testify as to the ultimate issue of whether the respondent is
6 ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. This testimony is
7 insufficient unless accompanied by evidence from the professional person or others that:

8 ~~(a) the respondent is suffering from a mental disorder; and~~

9 ~~(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat~~
10 ~~thereof or has deprived the person afflicted of the ability to protect his life or health~~

11 (a) the respondent, because of a mental disorder, is substantially unable to provide for the
12 respondent's own basic needs, such as OF food, clothing, shelter, health, or safety;

13 (b) the respondent has recently, because of a mental disorder and through an act or an omission,
14 caused self-injury or injury to others;

15 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to
16 others because of the respondent's acts or omissions; or

17 (d) (i) the respondent's mental disorder:

18 (A) has resulted in behavior RECENT ACTS, OMISSIONS, OR BEHAVIORS that creates CREATE
19 difficulty in protecting the respondent's life or health;

20 (B) is treatable, with a reasonable prospect of success;

21 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for
22 treatment; and

23 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the
24 point at which the respondent will become a danger to self or to others or will be unable to provide for the
25 respondent's own basic needs, such as OF food, clothing, shelter, health, or safety. Predictability may be
26 established by the respondent's RELEVANT medical history.

27 (5) The court, upon the showing of good cause and when it is in the best interests of the
28 respondent, may order a change of venue."
29

30 Section 23. Section 53-21-127, MCA, is amended to read:

1 "53-21-127. (Temporary) Posttrial disposition. (1) If, upon trial, it is determined that the
2 respondent is not mentally ill or seriously mentally ill within the meaning of this part, the respondent must
3 be discharged and the petition dismissed.

4 (2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously
5 mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The
6 disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth
7 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and
8 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

9 (i) commit the respondent to a facility for a period of not more than 3 months;

10 (ii) order the respondent to be placed in the care and custody of a relative or guardian or some
11 other appropriate place other than an institution;

12 (iii) order outpatient therapy; or

13 (iv) make some other appropriate order for treatment.

14 (b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a
15 period of more than 3 months.

16 (c) In determining which of the above alternatives to order, the court shall choose the least
17 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.
18 The court shall consider and shall describe in its order what alternatives for treatment of the respondent
19 are available, what alternatives were investigated, and why the investigated alternatives were not deemed
20 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication
21 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the
22 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient
23 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary
24 administration and unless, if possible, a medication review committee reviews it prior to the beginning of
25 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning
26 of the involuntary administration. The medication review committee must include at least one person who
27 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,
28 must receive adequate written notice of the date, time, and place of the review and must be allowed to
29 appear and give testimony and evidence. The involuntary administration of medication must be again
30 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if

1 medication is still being involuntarily administered. The mental disabilities board of visitors and the director
2 of the department of public health and human services must be fully informed of the matter within 5
3 working days after the beginning of the involuntary administration. The director shall report to the governor
4 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it
5 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the
6 facts upon which it found involuntary medication to be necessary.

7 (3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill
8 within the meaning of this part, the court shall order that the respondent receive treatment for a period of
9 no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available
10 to the respondent. The court must make a separate finding, setting forth the reason therefor if the order
11 includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient
12 treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may
13 not be required to pay for court-ordered treatment unless respondent is financially able.

14 (4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3),
15 the court shall make findings of fact that treatment appropriate to the needs of the respondent is available.
16 The court shall also indicate on the order the name of the facility that is to be responsible for the
17 management and supervision of the respondent's treatment. No person may use physical force to
18 administer medication. A court may use any legal means to enforce an order to take medication, including
19 immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court.
20 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

21 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that
22 the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment
23 within the meaning of this part, the respondent must be discharged and the petition dismissed.

24 (2) (a) If it is determined that the respondent is ~~seriously mentally ill~~ suffering from a mental
25 disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition
26 hearing. The disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and
27 holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order
28 further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court
29 shall:

30 (i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;

1 (ii) commit the respondent to a community facility, program, or course of treatment for a period
2 of not more than 3 months;

3 ~~###(iii)~~ order the respondent to be placed in the care and custody of a relative or guardian or some
4 other appropriate place other than an institution;

5 ~~###(iv)~~ order outpatient therapy; or

6 ~~(iv)(v)~~ make some other appropriate order for treatment.

7 (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody
8 or course of treatment for a period of more than 3 months.

9 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall
10 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit
11 effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment~~
12 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~
13 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician
14 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary
15 medication is necessary to protect the respondent ~~and or~~ the public ~~and or~~ to facilitate effective treatment.
16 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility
17 or a physician designated by the court approves it prior to the beginning of the involuntary administration
18 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary
19 administration or, if prior review is not possible, within 5 working days after the beginning of the
20 involuntary administration. The medication review committee must include at least one person who is not
21 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient
22 has one, must receive adequate written notice of the date, time, and place of the review and must be
23 allowed to appear and give testimony and evidence. The involuntary administration of medication must be
24 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration
25 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director
26 of the department of public health and human services must be fully informed of the matter within 5
27 working days after the beginning of the involuntary administration. The director shall report to the governor
28 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~
29 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~
30 ~~facts upon which it found involuntary medication to be necessary.~~

1 (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to
2 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court
3 may require commitment only to a community facility and may not require commitment at the state
4 hospital.

5 (e) In ordering commitment pursuant to this section, the court shall make the following findings
6 of fact:

7 (i) a detailed statement of the facts upon which the court found the respondent to be suffering
8 from a mental disorder and requiring commitment;

9 (ii) the alternatives for treatment that were considered;

10 (iii) the alternatives available for treatment of the respondent;

11 (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

12 (v) the name of the facility, program, or individual to be responsible for the management and
13 supervision of the respondent's treatment;

14 (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was
15 chosen from among other alternatives; and

16 (vii) if the order includes involuntary medication, the reason involuntary medication was chosen
17 from among other alternatives."

18
19 **Section 24.** Section 53-21-128, MCA, is amended to read:

20 **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month
21 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be
22 followed:

23 (a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person
24 in charge of the patient at the place of detention may petition the district court in the county where the
25 patient is detained for extension of the detention period unless otherwise ordered by the original committing
26 court. The petition shall be accompanied by a written report and evaluation of the patient's mental and
27 physical condition. The report shall describe any tests and evaluation devices which have been employed
28 in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future
29 course of treatment anticipated by the professional person.

30 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to

1 the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and
2 the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous
3 detention authority, the court shall immediately set a time and place for a hearing on a date not more than
4 10 days from the receipt of the request and notify the same people, including the professional person in
5 charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a
6 period not to exceed 6 months.

7 (c) Procedure on the petition for extension when a hearing has been requested shall be the same
8 in all respects as the procedure on the petition for the original 3-month commitment except the patient is
9 not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility
10 in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any,
11 shall be paid by the county that paid the same costs in the initial commitment proceedings.

12 (d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of
13 this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to
14 suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient
15 therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more
16 than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are
17 available, what alternatives were investigated, and why the investigated alternatives were not deemed
18 suitable. The court shall not order continuation of an alternative which does not include a comprehensive,
19 individualized plan of treatment for the patient. A court order for the continuation of an alternative shall
20 include a specific finding that a comprehensive, individualized plan of treatment exists.

21 (2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this
22 subsection (2) must be followed:

23 (a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under
24 53-21-127(3), the professional person in charge of the respondent's care may petition the court for
25 extension of the treatment period. The petition must be accompanied by a written report and evaluation
26 of the respondent's mental and physical condition. The report shall describe any tests and evaluation
27 devices which have been employed in evaluating the respondent, the course of treatment which has been
28 undertaken for the respondent, and the future course of treatment anticipated by the professional person.

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
30 the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,

1 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination
2 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date
3 not more than 5 days from the receipt of the request and notify the same people, including the professional
4 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment
5 for a period not to exceed 30 days.

6 (c) Procedure on the petition for extension when a hearing has been requested shall be the same
7 in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment except that
8 the respondent is not entitled to trial by jury. The hearing shall be held in the district court for the county
9 in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness
10 fees, if any, shall be paid by the county that paid the same costs in the initial proceedings.

11 (d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this
12 part, the petition shall be dismissed. If the court finds that the respondent continues to be mentally ill, the
13 court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court
14 shall describe what alternatives for treatment of the respondent are available, what alternatives were
15 investigated, and why the investigated alternatives were not considered suitable. The court may not order
16 continuation of an alternative which does not include a comprehensive, individualized plan of treatment for
17 the respondent. A court order for the continuation of an alternative shall include a specific finding that a
18 comprehensive, individualized plan of treatment exists.

19 (3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained
20 under the same procedure described in subsection (1) except that the patient's custody may not be affected
21 for more than 1 year without a renewal of the commitment under the procedures set forth in subsection
22 (1), including a statement of the findings required by subsection (1).

23 (4) The period of treatment provided for in 53-21-127(3) may be extended only once under this
24 section. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

25 **53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less
26 than 2 calendar weeks prior to the end of the 3-month period of ~~detention~~ commitment provided for in
27 53-21-127(2), the professional person in charge of the patient at the place of ~~detention~~ commitment may
28 petition the district court in the county where the patient is ~~detained~~ committed for extension of the
29 ~~detention~~ commitment period unless otherwise ordered by the original committing court. The petition ~~shall~~
30 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The

1 report ~~shall~~ must describe any tests and evaluation devices ~~which that~~ have been employed in evaluating
2 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future
3 course of treatment anticipated by the professional person.

4 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
5 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
6 court, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the
7 previous ~~detention~~ commitment authority, the court shall immediately set a time and place for a hearing on
8 a date not more than 10 days from the receipt of the request and notify the same people, including the
9 professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of
10 commitment for a period not to exceed 6 months.

11 (c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the
12 same in all respects as the procedure on the petition for the original 3-month commitment except the
13 patient is not entitled to trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction
14 over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and
15 witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial commitment
16 proceedings.

17 (d) If upon the hearing the court finds the patient not ~~seriously mentally ill to be suffering from a~~
18 mental disorder and requiring commitment within the meaning of this part, ~~he~~ the patient ~~shall~~ must be
19 discharged and the petition dismissed. If the court finds that the patient continues to suffer from ~~serious~~
20 mental illness a mental disorder and to require commitment, the court shall order commitment, custody in
21 relatives, outpatient therapy, or other order as set forth in 53-21-127(2) ~~except that no~~. However, an order
22 may not affect ~~his~~ the patient's custody for more than 6 months. In its order, the court shall describe what
23 alternatives for treatment of the patient are available, what alternatives were investigated, and why the
24 investigated alternatives were not ~~deemed~~ found suitable. The court ~~shall~~ may not order continuation of
25 an alternative ~~which that~~ does not include a comprehensive, individualized plan of treatment for the patient.
26 A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a
27 comprehensive, individualized plan of treatment exists.

28 (2) Further extensions may be obtained under the same procedure described in subsection (1)
29 ~~except that~~, however, the patient's custody may not be affected for more than 1 year without a renewal
30 of the commitment under the procedures set forth in subsection (1), including a statement of the findings

required by subsection (1)."

Section 25. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent danger of death or serious bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill is a danger to the person or to others because of a mental disorder~~ and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining ~~his~~ the professional person's actions.

(3) The county attorney of ~~any~~ a county may make arrangements with ~~any~~ a federal, state, regional, or private mental facility or with a mental health facility in ~~any~~ a county for the detention of persons held pursuant to this section. ~~Whenever~~ If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility ~~must~~ shall certify to the county attorney that the facility does not have adequate room at that time.

(4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state hospital must be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."

Section 26. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of ~~the~~ precommitment examination, ~~commitment~~, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county

in which ~~he~~ the person resides at the time ~~he~~ that the person is ~~adjudged to be seriously mentally ill~~ committed. The sheriff must be allowed the actual expenses incurred in taking a committed person who ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 27. Section 53-21-134, MCA, is amended to read:

"53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder pending return to home state. A person who is ~~seriously mentally ill~~ suffering from a mental disorder and in need of commitment and who is not a resident of this state may be received into the state hospital for a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."

Section 28. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail. (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental disorders and who require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

(a) request services from a crisis intervention program established by the department, as provided

for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for ~~serious mental illness~~ a mental disorder and the need for commitment can be performed."

Section 29. Section 53-21-139, MCA, is amended to read:

"53-21-139. Crisis intervention programs. (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n)."

Section 30. Section 53-21-144, MCA, is amended to read:

"53-21-144. Rights concerning photographs ~~and videotapes~~. (1) A person admitted to a mental health facility may be photographed ~~upon admission for identification and the~~ or videotaped for the clinical or administrative purposes of the facility. Such ~~The photographs shall be or videotapes are~~ confidential and ~~shall not be released by the facility except pursuant to court order.~~ Photographs may be released to a law

1 enforcement agency when needed to aid in the search for a person who has left a facility without
2 authorization from the facility's medical staff AND WHEN IT IS DETERMINED THAT THE PERSON IS A
3 SELF-THREAT OR SELF-DANGER OR A THREAT OR DANGER TO OTHERS AT THE TIME THAT THE
4 PERSON LEFT THE FACILITY. A law enforcement agency may not subsequently release photographs to the
5 public or other persons unless authorized by a court order.

6 (2) ~~No other~~ Other nonmedical photographs ~~shall or videotapes may not~~ be taken or used without
7 consent of the patient or, if applicable, the patient's legal guardian or without a court order."

8
9 **Section 31.** Section 53-21-182, MCA, is amended to read:

10 **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the
11 patient's commitment, the court may, on its own initiative or upon application of the professional person
12 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party
13 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,
14 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient
15 therapy or other appropriate placement or treatment."

16
17 **Section 32.** Section 53-21-195, MCA, is amended to read:

18 **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**
19 **-- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient
20 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition
21 in any district court by the county attorney, the professional person in charge of the patient's case, or the
22 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each
23 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under
24 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded
25 to the clerk. The file or files must be promptly forwarded.

26 (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

27 (3) The petition must state:

28 (a) the patient's name and last-known address;

29 (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent
30 appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring commitment within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date that the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

Section 33. Section 53-21-197, MCA, is amended to read:

"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release. (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time

1 set forth in 53-21-162.

2 (4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may
3 not order hospitalization or impose other conditions of release that extend beyond the expiration date of
4 the order committing the patient under 53-21-127 or 53-21-128."

5
6 **Section 34.** Section 53-21-198, MCA, is amended to read:

7 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be
8 extended by the district court beyond the expiration date of the order committing the patient under
9 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear
10 and convincing evidence that:

11 (a) continuation of the conditions of release is necessary to prevent the deterioration of the
12 patient's mental disorder; and

13 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~
14 patient. Predictability may be established by the patient's medical history.

15 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under
16 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the
17 professional person responsible for the patient's case may petition the court for extension of the conditions
18 of release. The petition must be accompanied by a written report and evaluation of the patient's mental
19 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been
20 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,
21 and the future course of treatment anticipated by the professional person.

22 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
23 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
24 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the
25 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place
26 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,
27 including the professional person in charge of the patient. If a hearing is not requested, the court shall
28 enter an order extending the conditions of release for a period not to exceed 6 months.

29 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing
30 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,

1 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district
2 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by
3 the county that paid the same costs in the initial commitment proceeding.

4 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been
5 made, the conditions of release may not be extended. If the court finds that the required showing has been
6 made, the court may extend the conditions of release as recommended by the professional person. In its
7 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives
8 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court
9 may not order continuation of an alternative that does not include a comprehensive, individualized plan of
10 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative
11 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

12 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~
13 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the
14 extension under the procedures set forth in this section, including a hearing and a statement of the findings
15 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation
16 provided in subsection (1)."

17
18 **Section 35.** Section 70-19-413, MCA, is amended to read:

19 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies
20 if a person entitled to commence an action for the recovery of real property or for the recovery of the
21 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property
22 or to rents or services out of the same is, at the same time ~~such~~ the title first descends or accrues:

- 23 (a) under the age of majority;
- 24 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or
- 25 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term
26 of less than for life.

27 (2) The time during which disability continues is not considered any portion of the time in this
28 chapter limited for the commencement of ~~such~~ the action or the making of ~~such~~ the entry or defense, ~~but~~
29 ~~such.~~ The action may be commenced or entry or defense made within the period of 5 years after ~~such~~ the
30 disability ceases or after the death of the person entitled who dies under ~~such~~ the disability, but ~~such~~ the

1 action may not be commenced or entry or defense made after that period."

2

3 Section 36. Section 70-29-113, MCA, is amended to read:

4 "70-29-113. **Death or incompetency of parties -- proceedings not delayed.** (1) If during the
5 pendency of the action ~~any of the parties~~ a party dies ~~or becomes seriously mentally ill~~ is committed
6 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be
7 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~
8 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to
9 represent the interest ~~which that~~ was held by the party until ~~his~~ the party's heirs ~~or~~ legal representatives,
10 or successors in interest have appeared in the action.

11 (2) An attorney ~~so~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a
12 reasonable compensation for ~~his~~ the attorney's services, ~~which~~. The compensation may be taxed as costs
13 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share
14 or interest, in the discretion of the court."

15

16 Section 37. Section 70-29-210, MCA, is amended to read:

17 "70-29-210. **Consent of guardian to share of ward.** The general guardian of a minor and the
18 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed
19 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who
20 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~
21 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or
22 other person entitled ~~and to the share~~. The guardian may execute a release, in ~~his~~ the person's behalf, to
23 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the
24 court."

25

26 Section 38. Section 70-29-328, MCA, is amended to read:

27 "70-29-328. **Incompetent's share of proceeds -- payment to guardian.** The guardian who may be
28 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant
29 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest
30 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the

1 proceeds of ~~such the~~ real property from the referees. The guardian may receive the interest on executing
2 an undertaking with sufficient sureties an undertaking, a surety. The undertaking must be approved by a
3 judge of the court, that he and must state that the guardian will faithfully discharge the trust reposed placed
4 in him the guardian and will render a true and just make an accurate account to the person entitled to the
5 accounting or to his the person's legal representative."

6
7 **Section 39.** Section 72-5-322, MCA, is amended to read:

8 **"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the
9 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court
10 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~
11 ~~shall.~~ However, the order may not forcibly detain the ward against his the ward's will for more than 72
12 hours.

13 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights
14 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment
15 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

16
17 **NEW SECTION. Section 40. Saving clause.** [This act] does not affect rights and duties that
18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
19 act].

20
21 **NEW SECTION. Section 41. Effective date.** [This act] is effective July 1, 1997.

22 -END-